EXHIBIT 7

In Re:

HIGHLAND CAPITAL MANAGEMENT, L.P.

Case No. 19-12239(CSS)

December 2, 2019

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

- -x

In the Matter of:

HIGHLAND CAPITAL MANAGEMENT, L.P., Case No.

Debtor. 19-12239(CSS)

- -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

December 2, 2019

10:07 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

CHIEF U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

Motion for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (Docket No. 68).

Motion of the Official Committee of Unsecured Creditors for Entry of an Order Authorizing Filing Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtor's (1) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (Docket No. 123).

Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (Docket No. 8).

Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date (Docket No. 69).

Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date (Docket No. 70).

Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (Docket No. 5).

Motion Pursuant to 11 U.S.C. Sections 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc as of the Petition Date (Docket No. 75).

Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business (Docket No. 77).

Motion of the Official Committee of Unsecured Creditors for an Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (Docket No. 86).

Transcribed by: Clara Rubin

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ALSO PRESENT:

ISAAC D. LEVENTON, ESQ., Asst. General Counsel, Highland Capital Management

FRANK WATERHOUSE, Partner and CFO, Highland Capital Management

BRADLEY SHARP, Pres. and CEO, Development Specialists, Inc.

FRED CARUSO, COO, Development Specialists, Inc.

P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Please be seated.

MR. O'NEILL: Good morning, Your Honor.

THE COURT: Good morning.

MR. O'NEILL: James O'Neill, Pachulski Stang Ziehl & Jones, here today on behalf of the debtor, Highland Capital Management. With me, Your Honor, at counsel table is Jeff Pomerantz, Ira Kharasch, John Morris, Greg Demo, and Max Litvak, representing the debtor. Also in the courtroom with us, from our client, Isaac Leventon and Frank Waterhouse and, from DSI, Brad Sharp and Fred Caruso.

THE COURT: Welcome.

MR. O'NEILL: Your Honor, we have a number of matters on the agenda today, but we are going to proceed with item number 12 on the agenda, which is the committee's venue motion. So I will yield the podium to them.

THE COURT: Okay.

MR. CLEMENTE: Good morning, Your Honor.

THE COURT: Good morning.

MR. CLEMENTE: Matthew Clemente from Sidley Austin, proposed counsel to the official committee of unsecured creditors. With me here today, my colleagues Dennis Twomey and Penny Reid, along with our co-counsel from Young Conaway, Mike Nestor and Sean Beach.

Your Honor, we have filed our venue motion. We believe that venue -- it's appropriate to transfer venue to the bankruptcy court in the District of Texas for the reasons that we laid out in the motion. Based on Your Honor's -- discussions with Your Honor this morning, we understand that we would proceed with what I believe would be a short proffer from the debtor, we would have an opportunity to cross, and then we would proceed to argument from there. If that's acceptable to Your Honor, that's --

THE COURT: That's fine. Thank you.

MR. CLEMENTE: -- that's the way we'd proceed.

THE COURT: Yes.

MR. CLEMENTE: Thank you, Your Honor.

MR. POMERANTZ: Good morning, Your Honor. Jeff Pomerantz, Pachulski Stang Ziehl & Jones, on behalf of the debtor. We'd also like at this time, Your Honor, to move into evidence Exhibits A through U, except for Exhibit G. Exhibit G is one of those documents that we refer to in chambers as would be subject to seal. We don't need to refer to it in connection with the venue motion. But if Your Honor would like, I can approach with a binder containing the --

THE COURT: Yeah, I don't have those.

MR. POMERANTZ: -- exhibits. There have been no objections to them.

MR. POMERANTZ: Your Honor, if Mr. Sharp were called

to testify, he would testify --

THE COURT: Hang --

MR. POMERANTZ: Oh, sorry.

THE COURT: Hang on. Okay.

MR. POMERANTZ: Okay.

THE COURT: Look at the documents. It's the first I've seen them.

(Pause)

THE COURT: So you're moving A through U, except for G?

MR. POMERANTZ: Correct, Your Honor.

THE COURT: Any objection?

MR. CLEMENTE: Sorry, Your Honor, one --

THE COURT: No; yeah, that's fine.

MR. CLEMENTE: No objection, Your Honor.

THE COURT: All right, they're admitted without objection, other than G. G is not admitted at this time.

(Debtors' Exhibits A through U, except for Exhibit G, were hereby received into evidence, as of this date.)

THE COURT: All right, you may proceed with the proffer.

MR. POMERANTZ: Thank you, Your Honor.

If Mr. Sharp were called to testify, he would testify that he is the proposed chief restructuring officer of the debtor; he's also the president of Development Specialists,

Inc., a financial advisory firm. He would testify that he's been a restructuring professional with over twenty-five years of experience as a trustee, a chief restructuring officer, and a financial advisor, in a myriad of industries. He would testify that he has been appointed as chief restructuring officer in four cases in Delaware, including In re Variant before Judge Shannon, In re Woodbridge before Judge Carey, In re WL Homes before Judge Shannon, and In re Beverly Hills Bancorp before Judge Carey.

He would testify that he has a national practice, he's physically headquartered in Los Angeles, and it would be as convenient for him to travel to this court in Delaware than it would be for him to travel to Dallas. He would testify that the debtor's counsel, Pachulski Stang Ziehl & Jones, has offices in Delaware and, if the case were transferred, the debtor would need to retain local counsel in Dallas.

He would testify that he was initially engaged by the debtor on October 7, 2019 and that, prior to his engagement as a CRO, he had no prior involvement with Highland or any of its senior management employees or principals. He would testify that he was introduced to Highland by Pachulski Stang Ziehl & Jones.

He would testify that, since his engagement, he and his colleague, Fred Caruso, who functions as an extension of him in his role as chief restructuring officer, and other

employees of DSI have devoted themselves to learning about the debtor's business and financial affairs, knowledge that only increases as the days go by. He would testify that he and others from DSI have spent hundreds of hours meeting with various employees of the debtor and reviewing and accessing the debtor's books and records. He would testify that he's been given complete access to a wealth of information by the debtor, and nothing he or his team have requested from the debtor have been withheld by them.

He would testify that the debtor's a limited partnership organized under the laws of Delaware and that the debtor's general partner, Strand Advisors, is a corporation organized under Delaware law as well, and Strand is the manager of the debtor. He would testify that over ninety-nine percent of the debtor's limited partnerships are held by Delaware entities.

He would testify that the debtor owns and manages a sophisticated financial-advisory-services and money-management business that has assets and interests all over the world; that the debtor's assets under management, including its own proprietary assets and those of its clients, through various related parties, exist in the United States, Asia, South America, and Europe.

He would testify that the debtor has over two-and-a-half billion dollars of assets under management and receives

management and advisory fees from a multitude of sources around the world. He would also testify that the debtor provides shared services for approximately 7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors.

He would testify that although the debtor is based in Dallas, the debtor's affiliates and related parties maintain offices or have personnel in many international locales, including Buenos Aires, Rio de Janeiro, Singapore, and Seoul. He would testify that the debtor owns and manages targeted funds in Korea, South America, and Singapore.

He would testify that the debtor's filed the motion that's pending today to appoint him as foreign representative in order to manage certain foreign interests, including those proceedings pending in Bermuda and Cayman. He would testify that the principal assets in the United States consist of custodial and noncustodial interests and investments located all over the country, and that the debtor's prime brokerage account that holds the bulk of the debtor's liquid assets is located in New York City with Jefferies.

He would testify the debtor owes approximately 30 million dollars to Jefferies on account of margin obligations that are secured by the securities in the prime account, and that the debtor's other principal secured creditor, Frontier State Bank, is based in Oklahoma City and is owed approximately

5.2 million dollars as of the petition date.

He would testify that one aspect of the debtor's business is management advisory services in connection with various investments and collateralized loan obligations, or "CLOs", and that the debtor previously provided submanager, subadvisory, and shared services to Acis CLOs pursuant to certain contractual agreements that were terminated during the course of Acis' bankruptcy in or around August 2018. He would testify that he's informed and believes that the compensation structure for subadvisory and shared-service agreements is different for CLOs than with other types of private equity or hedge funds that the debtor manages.

He will testify that a focus of DSI's efforts in this case will be to evaluate the appropriateness and the economics of the shared-service agreements and subadvisory agreements that the debtor's a party to with both affiliated and unaffiliated third parties, and he would determine what modifications are appropriate given the facts and circumstances.

He would testify that, since the petition date and, he believes, since August 2018, the debtor has not had any direct business dealings with respect to Acis or the CLO assets for which Acis serves as CLO manager, and that the debtor no longer advises or subadvises any active CLOs; the debtor only has CLOs that are in liquidation and in the process of monetizing their

underlying assets and paying off their remaining investors' revenues that will decrease over time; and that the CLO portion of the debtor's business provides just ten percent of the debtor's revenue, which, again, will shrink over time.

He would testify that the debtor derives ninety percent of its other revenue from managing asset classes that have nothing to do with Acis, including private equity, hedge fund, mutual funds, open-ended retail funds, and real-estate funds.

He would testify that the debtors and Acis assert various substantial disputed and unliquidated claims against each other, and the debtor has outstanding claims against Acis that total no less than eight million dollars for services rendered. He would testify that the debtor and Acis have been, and continue to be, involved in highly contentious litigation, including matters that are subject to multiple appeals from the bankruptcy court and pending fraudulent-transfer claims brought by Acis against the debtor, in Texas. He would testify the debtor is currently supporting two pending appeals of orders of the Texas bankruptcy court, granting the involuntary petition against Acis and confirming Acis' Chapter 11 plan that put Mr. Terry in charge of Acis.

He would testify that, although he serves subject to the debtor's ability to terminate him, he has full responsibility with respect to analyzing and pursing insider

transactions and is in charge of the debtor's restructuring efforts, and that he has no prior relationship with either Acis or the Texas bankruptcy court with respect to this matter. He would testify that his goal in this case is to maximize the value of the debtor's estate for the benefit of all constituents, and he intends to evaluate all available strategic options for accomplishing the goal, and hopes to work constructively with the committee in that regard.

He believes that the outcome of this case will not turn on the day-to-day management of the debtor's assets but instead will be driven by the debtor's ability to restructure its balance sheet and maximize the value of its assets, many of which are liquid. He would testify that either he or Fred Caruso would provide substantially all the testimony that would be provided for the debtor in this case.

Lastly, he would testify that he's been on the job for over a month-and-a-half, that the debtor has been following the protocols set out in the motion for which approval is being sought today. He would testify the debtor's being transparent with the creditors' committee, has met with and communicated with FTI on many occasions, and shared a lot of information. And he would testify that there have been no allegations made by the committee or any other party, regarding any post-petition impropriety by the debtor.

That concludes my proffer of Mr. Sharp's testimony.

THE COURT: All right, thank you very much.

Does anyone wish to cross-examine the witness?

UNIDENTIFIED SPEAKER: Yes, Your Honor.

THE COURT: Yes?

UNIDENTIFIED SPEAKER: Yeah.

THE COURT: Okay.

MS. REID: Yes, Your Honor.

THE COURT: Mr. Sharp, would you please take the stand? And remain standing for your affirmation.

THE CLERK: Would you step up to the stand, please? Raise your right hand.

(Witness affirmed)

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Bradley Sharp, B-R-A-D-L-E-Y; last name, S-H-A-R-P.

THE CLERK: Thank you.

THE COURT: Very good.

MS. REID: Good morning, Your Honor. Penny Reid on behalf of the creditors' committee.

THE COURT: Good morning.

Mr. Sharp, just -- you look like a veteran, but if you could stay close to the microphone, I'd appreciate it.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MS. REID:

Q. Mr. Sharp, you've only met Mr. Dondero once; correct?

A. That is correct.

Q. And that was in Dallas; correct?

A. That is correct.

Q. And your team has been at the debtor's offices; correct?

A. Yes.

Q. And worked over a hundred hours at the debtor's offices; correct?

A. Yes.

Q. And that's all been in Dallas; correct?

A. Yes.

Q. Your team has not been to a New York office; has it?

A. No.

Q. Has your team -- your team has not been to Korea; has it?

A. No.

Q. Your team has not been to Singapore; has it?

A. With respect to this engagement, no.

Q. Okay. And you haven't met any employees in the Singapore office; have you?

A. No.

Q. And under this proposed engagement, you're going to report to Mr. Dondero; correct?

A. Yes.

MS. REID: We will reserve our rights to further question him on the other issues, non-venue issues.

THE COURT: Of course.

MR. SHAW: Good morning, Your Honor. Brian Shaw on behalf of Acis Capital Management, a creditor.

THE COURT: Yes, Mr. Shaw, you may proceed.

CROSS-EXAMINATION

BY MR. SHAW:

Q. Mr. Sharp, you were hired nine days before the bankruptcy petition was filed in this case; correct?

A. Correct.

Q. Other than the retention of DSI, are there any other new managers at the debtor, that didn't exist prior to the bankruptcy filing?

MR. MORRIS: Objection. Beyond the scope, Your Honor. This should be a traditional cross.

THE COURT: You're going to need to find a microphone or talk into one that's in front of you.

MR. MORRIS: John Morris, Pachulski Stang Ziehl & Jones, for the debtor.

This line of questioning is beyond the scope. This should be a traditional cross. The moving parties have called no witnesses, as Your Honor is aware.

THE COURT: Well, they reserved the right to call witnesses based on what you did in your direct. So I'm not

going to hold them to technicalities.

You may proceed.

MR. SHAW: Thank you, Judge.

THE COURT: Do you remember the question, Mr. Shaw?

THE WITNESS: I do.

A. Not that I'm aware of.

Q. Okay. So other than -- so DSI is the only difference pre-petition and post-petition; is that right?

A. With respect to management. Obviously, the company's now operating in bankruptcy, which is significantly different.

Q. You testified, in your proffer, regarding the provision of shared services and subadvisory to Acis; do you remember that proffer your counsel commented about?

A. I do.

Q. And one of the core parts of the debtor's business is the provision of shared services and subadvisory services to affiliates and nonaffiliates; right?

A. Yes.

Q. Okay. And so that was true for Acis and it's true for current affiliates of the debtor; right?

A. Yes, except for, you know, Acis was primarily CLOs, which is a reducing part of the debtor's business.

Q. Do you have any reason to believe that the Northern District of Texas cannot hear this case expeditiously and fairly?

A. No.

MR. SHAW: Pass the witness.

THE COURT: Any other cross-examination?

Hearing none, any -- redirect; that's what it's called. There we go.

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right. Thank you, sir. You may step down.

THE WITNESS: Thank you.

THE COURT: Any further evidence by any party, in connection with the venue motion only?

MR. CLEMENTE: Your Honor, I believe we would like to call Mr. Waterhouse to the stand to testify in connection with the venue motion briefly.

THE COURT: All right. Mr. Waterhouse. I thought we -- there we go. If you could please take the stand as well, sir, and remain standing.

MR. GUERKE: May it please the Court. Good morning, Your Honor. Kevin Guerke on behalf of the creditors' committee.

THE CLERK: Please raise your right hand.

(Witness affirmed)

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Yes; it's Frank Waterhouse, F-R-A-N-K,

W-A-T-E-R-H-O-U-S-E.

THE CLERK: Thank you.

THE COURT: Thank you. Please be seated and try to remain close to the microphone, if you would, please. It's a little awkward here.

You may proceed.

DIRECT EXAMINATION

BY MR. GUERKE:

Q. Mr. Waterhouse, you've worked for the debtor, Highland Capital Management, L.P., since 2006; correct?

A. Yes.

Q. You started there as a senior accountant; right?

A. That is correct.

Q. You were promoted to chief financial officer at the end of 2011; correct?

A. Yes.

Q. That's the title that you hold today; right?

A. Yes.

Q. You also currently hold the title of partner; right?

A. Yes.

Q. You were made partner three or four years ago; correct?

A. Yes. I mean, I don't remember the exact time but, yeah, approximately three or four years ago.

Q. You are an officer in Highland Affiliates; correct?

A. Yes.

Q. James Dondero is the president of Highland Capital Management, L.P.; right?
A. Yes.
Q. Mr. Dondero owns and controls Highland's general partner, Strand Advisors, Inc.; right?
MR. MORRIS: Your Honor, I'm just going to object for the record. This is supposed to be a rebuttal witness. This isn't rebutting anything; it's just new facts --
THE COURT: He's laying
MR. MORRIS: -- that they're seeking --
THE COURT: I'm sure he's laying foundation.
MR. GUERKE: I am, Your Honor. It's background, it's foundation. It has to go (sic) with the organizational structure.
THE COURT: That's fine. Objection overruled.
Q. Mr. Waterhouse, Mr. Dondero owns and control Highland's general partner, Strand Advisors, Inc.; correct?
A. I don't remember his exact title but, yes, he is president.
Q. He owns a hundred percent of the equity in Strand; right?
A. Yes.
Q. He also has a limited-partnership interest in Highland; correct?
A. That is correct.
Q. Mr. Dondero's the portfolio manager of all Highland funds;

right?

MR. MORRIS: Objection to the form of the question.

THE COURT: Overruled.

You can answer.

A. Yes, he -- he is the portfolio manager or the -- or a co-portfolio manager. We have several funds. I -- I -- I can't recall if he is the sole portfolio manager on every single fund or -- but he -- he -- but yes, he is -- he is a portfolio manager.

Q. As the president of Highland, Mr. Dondero promoted you to CFO back in 2011; right?

A. Yes. My -- my promotion was recommended by the -- the former CFO and, as president, Mr. Dondero had to, you know, obviously, approve that taking.

Q. You report to Mr. Dondero; right?

A. Yes.

Q. He's your boss; correct?

A. Yes.

Q. And after the transition period from the old CFO to you, you've reported only to Mr. Dondero; right?

A. That is correct.

Q. After the bankruptcy was filed, you still report to Mr. Dondero; right?

A. Yes.

Q. And Mr. Dondero doesn't report to anyone; correct?

A. Yeah, not -- not to my knowledge. Yeah, it's correct.
Q. Mr. Dondero has the ability to terminate you; right?
A. Again, I -- I assume so. Again, I think I -- I testified earlier last week, I -- I -- I -- you know, again, I don't know through this process -- again, I'm not -- bankruptcy is not something that I -- I am, you know, a specialist. I'm not a bankruptcy attorney. But maybe the CRO can, or Jim, or something in -- in conjunction. But I think, theoretically, yes.
Q. Post-bankruptcy, you don't report to Bradley Sharp; right?
MR. MORRIS: Objection, Your Honor. Same objection: beyond the scope.
THE COURT: Overruled.
A. I do not.
Q. Post-bankruptcy, you don't report to Fred Caruso; correct?
A. I do not.
Q. Mr. Sharp doesn't have the power to terminate your employment; right?
A. Again, I'll --
THE COURT: Actually, he already answered that question; said he wasn't sure.
Q. Mr. Waterhouse, there are six groups below Mr. Dondero in Highland's organizational chart; correct?
A. Give or -- give or take.
Q. The heads of those groups are the executive-level

management employees that you describe in your declaration that was submitted in association with the first-day motions; right?
A. Yes.
Q. You manage one of those teams; correct?
A. Yes.
Q. Your team is made up of the corporate accounting folks, Funding Accounting, the tax group, Valuation, Operations, Retail Fund Operations, Human Resources, and IT; right?
A. That -- that is correct.
Q. The other Highland teams are the legal-compliance team -- correct?
A. Yes.
Q. The credit-research team; right?
A. Yes.
Q. Public-relations team; correct?
A. Yes.
Q. Private-equity team; right?
A. Yes.
Q. And the trading team; true?
A. Yes.
Q. The heads of each one of those groups report up to Mr. Dondero; isn't that true?
A. Yes, and we -- we -- well, and we also -- and -- but we have a risk-management team as well, at Highland. That -- that risk-management team reports up through the trading team.

Q. As the CFO, your office is in Dallas, Texas; right?
A. Yes. My -- yes, we office in -- or my office is in Dallas, Texas.
Q. That's been the location of your office since you joined Highland; correct?
A. My current location in Dallas, Texas, is not the same as it was when I joined Highland Capital in October of 2006.
Q. You started in 2006 and your office was in Dallas; right?
A. Well, my offices were in Dallas but it was not at the same location as we are currently.
Q. Your current offices are also in Dallas; right?
A. Yes, their address is in Dallas, Texas.
Q. Over seventy Highland employees work out of Highland's Dallas office; right?
A. Yes.
Q. Dallas is the only location where Debtor Highland employees work; correct?
A. Yes.
Q. Mr. Dondero's office is in Dallas; true?
A. Yes.
Q. Members of the legal team have offices in Dallas; right?
A. Yes.
Q. You meet with Mr. Dondero at a minimum of once a week; correct?
A. Yes, give or take.

Q. Usually those meetings are in his office in Dallas; right?
A. Yes.
Q. All the group heads that we just discussed all have offices in Dallas; right?
A. Yes. We used to -- our -- our risk-management team used to be officed in New York. But yes, we -- we -- yes.
Q. You mentioned New York. There's a location in New York that we discussed at your deposition; do you remember that?
A. Yes.
Q. That office in New York is not in Highland -- the debtor's name; true?
A. That is correct.
Q. It's in another nondebtor-entity name; correct?
A. Yes.
Q. There are no Highland employees in that New York location; correct?
A. That is correct.
Q. In the proffer that you just heard, and at your deposition, there was some discussion about offices outside of the United States. Do you recall that?
A. Yes.
Q. The people who work in those locations are not employees of the debtor, Highland Capital Management, L.P.; right?
A. That's right.
Q. The offices outside the U.S. are subsidiary offices with

subsidiary employees; correct?
A. That is correct.
Q. You've never been to those offices; right?
A. I have not.
Q. You have members of team who include David Klos, Clifford Stoops, and some other folks; right?
A. Yes.
Q. You have standing weekly meetings with those folks --
THE COURT: All right --
Q. -- right?
THE COURT: -- I'm going to reprimand -- this is well beyond -- I was giving you some leeway but, if this is what you wanted to put on -- it's your motion, sir. I mean, this is -- you're laying your foundation in your case-in-chief. Why didn't you put this on to begin with?
MR. GUERKE: Your Honor, it's rebuttal to the proffer that Mr. Sharp just offered.
THE COURT: In what way?
MR. GUERKE: Related to the organizational structure and how decisions are made currently at the debtor.
MR. MORRIS: Your Honor, if I may. I don't believe any aspect of the proffer went to the location of decision-making.
THE COURT: Would you like to reply to that?
MR. GUERKE: Yes. The proffer was made that decisions

are made in California and around the country, and around the world I believe. And this evidence rebuts that; that the organizational structure and the day-to-day operations are still run in Dallas, Texas, as they were before bankruptcy.

And, Your Honor, I have three questions, then I'll sit down.

THE COURT: Okay. All right, I'll allow it.

Q. When you meet with people on your team that we just identified, you meet with them in Dallas; correct?

A. That's correct.

MR. GUERKE: Those are my only questions. Thank you, Mr. Waterhouse.

THE COURT: All right.

THE WITNESS: Thank you.

THE COURT: That was direct. Any further direct? Yes, sir.

MR. SHAW: Real briefly, Your Honor.

DIRECT EXAMINATION

BY MR. SHAW:

Q. Mr. Waterhouse, as the CFO of the debtor, were you aware that the debtor intended to file bankruptcy prior to the filing?

MR. MORRIS: Objection. Beyond the scope.

MR. SHAW: Judge, we designated any witness that they designated, so I don't know that we necessarily have called --

THE COURT: Well, yeah, but it's your motion --

MR. SHAW: Correct.

THE COURT: -- and you declined to put any evidence on in support of your motion. They then put on evidence in opposition to your motion. So you're limited, sir, to rebutting the evidence they put on. You had your chance to make your case-in-chief; you decided not to do it. It's not my fault.

MR. SHAW: My understanding was that we were -- that, depending upon what the proffer was, which we -- we're not aware of what the proffer was before today, that we reserved the right to call Mr. Waterhouse, which I understood from our chambers conference is what we exercised that right to do. If I misunderstood how procedurally we were going about it, then --

THE COURT: Well, I don't understand how -- that doesn't make any sense to me. You get a free shot to hear their case first, and then you get to make your direct case? Why would I allow that? It's your motion.

MR. SHAW: Understood.

THE COURT: All right, so let's stick to rebutting what they put on.

MR. SHAW: Okay.

THE COURT: I gave a lot of leeway to your colleague; I'll give you leeway. But I don't really want to sit through

forty-five minutes of direct that you could have done in the first place.

MR. SHAW: And I promise you, I have a very few limited questions.

THE COURT: All right.

BY MR. SHAW:

Q. With regard -- where is Mr. Dondero today?

A. I don't know.

Q. For the shared services and subadvisory services that the debtor previously provided Acis -- are you aware of those?

A. I'm aware of them generally.

Q. All right. Have you ever reviewed the shared-services and subadvisory agreements between Acis and Highland?

A. I'm sure I reviewed them at -- at some point, but I honestly can't recall.

Q. How are those agreements different than the shared-services and subadvisory agreements currently between the debtor and various affiliates?

MR. MORRIS: Objection. No foundation.

MR. SHAW: It's directly relevant to -- the foundation being he said he's aware of them. I --

MR. MORRIS: The witness just testified that he's not familiar with them as he sits here --

THE COURT: I can't hear you.

MR. MORRIS: The witness just testified that he's not

familiar with them as he sits here today. He may have seen them in some -- at some point in the past.

THE COURT: Well, he can qualify the answer further. Overruled.

You can answer.

A. You know, again, I -- I don't -- I don't know. I don't have the documents in front of me. I -- I -- like I said, I'm generally aware of -- of the Acis agreements. You know, I don't have these agreements memorized to any certain degree, so I -- I -- I -- I don't know specifically.

Q. As -- you're familiar with the -- as the CFO, with the shared-services and subadvisory agreements that govern the seven billion dollars in assets under management that the debtor provides for affiliates and nonaffiliates; right?

A. Yes, I'm generally aware of those agreements.

Q. And are those agreements typical in form? Do they differ widely in their content?

A. Again, I don't know -- I mean, they -- they can. Again, it -- it depends on the nature of the services. And -- you know, it -- there isn't a standard template, I would say, for shared services. Yes, they can differ. As I said, I don't have those agreements memorized, so I can't speak as to how they are similar or how they are not.

MR. SHAW: Pass the witness.

THE COURT: Thank you.

I guess it'll be cross of your own witness. Any cross?

MR. MORRIS: No, thank you, Your Honor.

THE COURT: All right, sir, thank you. Mr. Waterhouse, you may step down.

THE WITNESS: Thank you.

THE COURT: You're welcome.

Any further evidence?

MS. PATEL: Your Honor, as I referenced, we just have some exhibits; I believe these to be the unobjected-to pieces of it. We -- Acis provided a witness-and-exhibit list. These are the unobjected-to exhibits, and we would just move them in. And --

THE COURT: Is this the ones I already have?

MS. PATEL: No, Your Honor. I believe you only have the debtor's.

THE COURT: Yeah.

MS. PATEL: And I will apologize, Your Honor; we've given debtors a copy of the exhibits. Our -- there was miscommunication. They are not bound.

THE COURT: That's fine.

MS. PATEL: But they are numbered.

THE COURT: All right.

MS. PATEL: If I may approach?

THE COURT: Yes. Please don't hurt yourself. It's a

bit of a mess there.

MS. PATEL: There's a little trash back here.

THE COURT: These are all not objected to; is that correct?

MS. PATEL: (Indiscernible), Your Honor, but I go through them.

THE COURT: Are they -- okay.

MS. PATEL: What I've handed the Court and to opposing counsel are Exhibits 1 -- Acis Exhibits 1 through 18, with the exclusion of Exhibit 3 and Exhibit 9, which were objected to; and then also Exhibit Numbers 24 and 25, which were not objected to. We do have one additional exhibit, Your Honor, that was objected to, that I would like to move in.

THE COURT: All right. Is there any objection to the admission of the documents that counsel has represented there's no objection to?

MR. MORRIS: No, Your Honor.

THE COURT: Okay. They are admitted without objection.

(Acis' Exhibits 1 through 18, with the exception of Nos. 3 and 9; and Exhibits 24 and 25, were hereby received into evidence, as of this date.)

MS. PATEL: If I may approach, Your Honor?

THE COURT: Yes.

Thank you.

MS. PATEL: And, Your Honor, my co-counsel will handle that -- will handle it since we -- this was a late objection and he prepared with respect to this; I prepared with respect to argument.

THE COURT: Okay.

Yes, sir.

MR. CLEMENTE: I believe there's a hearsay objection regarding this.

MR. MORRIS: Relevance and hearsay, Your Honor.

THE COURT: Okay.

MR. CLEMENTE: Your Honor, I'll address hearsay first. Federal Rule of Evidence 807 is a residual exception to the hearsay rule; provides that a hearsay statement is admissible if the statement is supported by sufficient guarantees of trustworthiness, after considering the totality of the circumstances under which it was made and evidence, if any, corroborating the statement, and (2) it is more probative on the point for which it is offered, than any other evidence that the proponent can obtain through reasonable efforts.

This is an email exchange between counsel for Acis and the courtroom deputy for Judge Jernigan, just requesting and ask -- inquiring about the court's availability. Everything about that email supports the fact that it is -- that it is authentic and that there's no question about whether or not it is -- it's trustworthy. How would we put on evidence of

whether or not Judge Jernigan in the Northern District of Texas has sufficient time to hear these numerous motions that are set, other than by providing something like this? I mean, we can't call or depose the courtroom deputy or the judge. So based upon that, also -- there also is an exception, under the hearsay rule, to a public record. I think this also falls within that exception to the rule. So for that reason, we don't believe the hearsay objection is proper.

As far as relevance, it goes to the argument about transfer and whether or not the transferee court can expeditiously hear the matter. And that's one of the elements and one of the core questions about judicial efficiency.

So for those reasons, we believe that the objections are not well-founded and we offer this exhibit. And it's Exhibit 26.

THE COURT: Reply?

MR. MORRIS: Briefly, Your Honor.

THE COURT: Yes.

MR. MORRIS: I'm not aware of any case where a court has ever considered, let alone decided, a venue motion on the availability of another court's time. So I don't think it's relevant at all. I do think it's an out-of-court statement being offered for the truth of the matter asserted, and I do believe it's hearsay.

MR. CLEMENTE: It most certainly is hearsay, Judge;

just to respond. But the question is not whether it's hearsay but whether it's admissible. And of course the Court is well aware that hearsay can be admissible, and one of the exceptions is the exception that I outlined.

THE COURT: All right, I'll overrule the objection and admit the document. It is hearsay but it clearly meets the reliability aspects for the exception to hearsay. With regard to the relevance, I think its relevance is very -- well, let me put it this way; I think it's tangentially relevant. I mean, it certainly is relevant whether the Northern District of Texas has the ability to handle the case were it transferred there. To me that's -- I don't even think that's disputed, I mean, it's obvious, it's a fantastic bankruptcy court. They're more than capable of handling it. So I -- it's probably duplicative, if nothing else.

Also, it's very carefully written so that you don't actually identify what case you're talking about. So whether the courtroom deputy realized what you were saying or not saying with regard to this specific motion is obviously unclear. But I will allow it for very limited purposes.

(Email exchange between Acis' counsel and Hon. Jernigan's courtroom deputy was hereby received into evidence as Acis' Exhibit 26, for the stated limited purposes, as of this date.)

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: Any other evidence?

I'm going to -- all right, last chance. I'm going to close the evidentiary record.

All right, the evidentiary record's closed. Let's take a short recess; then I'll hear argument. We will start with the movants and their supporters, and then we'll turn it over to the debtor. Okay? We'll take a short recess.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

(Recess at 10:48 a.m. until 11:05 a.m.)

THE COURT: Be seated. Sorry about the delay. We had some computer difficulties. But they're all ironed out.

You may proceed.

MR. CLEMENTE: Thank you, Your Honor. Again, Matthew Clements from Sidley Austin, on behalf of the committee.

Your Honor, to begin, everything we rely on in our venue argument is uncontested and uncontroverted and is in the record that either the debtor's exhibits or the Asic's (sic) exhibits or the record of this case, or published opinions of the Dallas bankruptcy court, and which Your Honor can take judicial notice of -- we believe that that record more than amply carries our evidentiary burden with respect to the venue motion.

With respect to the Sharp proffer, Your Honor, it attempted to create the appearance of a debtor with operations in far-flung jurisdictions, employees at nondebtor entities that may be located in places other than Dallas, offices that

may be in New York that aren't actually debtor offices. And the testimony of Mr. Waterhouse rebutted that and made clear that the debtor has no employees other than in Dallas and that Mr. Dondero makes all of the decisions, and he is in Dallas. The nerve center of this debtor is in Dallas. And we wanted to make that clear, Your Honor, after the proffer, the rebuttal, and the evidentiary record. We believe that the evidentiary record is largely uncontroverted with respect to the arguments that we're going to be made (sic) in our venue motion, and that Mr. Sharp's testimony has been effectively rebutted.

With that, Your Honor, we believe that this case is atypical and presents a set of unique facts which we believe are uncontroverted, that warrant transfer of venue to the Dallas bankruptcy court. And frankly, Your Honor, it does beg the question as to why the debtor chose not to file in Dallas, what we believe the most logical venue is, in the first instance. Let's talk about some of these unique facts here; then we'll move into some of the arguments we made in our motion, and then we'll talk about some of the things that the debtor made (sic) in its reply.

First and perhaps most importantly, which is obvious from the nature of this proceeding, not a single creditor or party-in-interest has filed papers supporting the debtor's venue in Delaware, other than, obviously, the debtor. The official committee has unanimously supported venue transfer to

Dallas, Texas. Acis, in its own capacity as creditor, has joined the transfer request. It's not surprising to us, Your Honor, that no creditor has affirmatively come out in favor of venue in Delaware, because the debtor is in Dallas and, in fact, that is where its nerve center is.

Your Honor, we do believe that it's particularly significant because in this case, although schedules and statements have not yet been filed, the creditors' committee makes up the vast majority of creditors in this case, in terms of absolute dollar amounts. There may be multiple creditors in number, but the vast majority of dollar amount of creditors are represented by the official committee of unsecured creditor (sic).

There was reference to Jefferies. They're owed thirty million dollars. There was reference to Frontier Bank. They're owed five million dollars. A single claim of one committee member dwarfs that by multiples, Your Honor. So we believe the fact that no other creditor supports venue in Delaware is a very significant fact, Your Honor, and is not controverted.

Second, Your Honor, until a few months ago, the Acis case, which is pending in the Dallas bankruptcy court, was an affiliated case. And again, this can be gleaned from the published decisions and the record that's been put into evidence. Had this case been filed prior to confirmation of

the Acis plan, under Rule 1014 the Dallas bankruptcy court would be the appropriate court to determine venue. And although I would never suppose to predetermine how a judge would rule, I think there would have been a high probability that the Dallas court would have taken venue over the debtor's case.

This is important, Your Honor, because the third point I'd like to make is that Highland and the debtor, and as we have described in our papers and related attachments, and as Mr. Sharp referred to in his proper -- in his proffer, has itself filed an appeal, seeking to overturn the confirmed Acis plan of reorganization and return the equity that was distributed to Mr. Terry under that confirmed plan, to an entity called Nutro (ph.).

Second on Nutro, Your Honor. Nutro's wholly owned by Mr. Dondero and, therefore, if Acis were returned underneath Nutro, it would become an affiliate of this debtor, and Acis would once again be subject to, as an initial matter, a venue -- excuse me, this debtor would be subject to, as an initial matter, a venue determination by the Dallas bankruptcy court. If we have a successful appeal, we would have affiliated cases with dueling jurisdictions, Your Honor, and the Dallas bankruptcy court, as I mentioned, would determine venue.

On that, Your Honor, the debtor must believe -- it's

not just me speculating. The debtor must believe that there is a material possibility of this occurrence, as it has been seeking to employ counsel -- and you'll hear about that shortly -- and expend estate resources on behalf of Nutro, a nondebtor affiliate, in an attempt to have the Acis confirmation order overturned, with, again, the result being Acis would, again, be a debtor affiliate. Therefore, the debtor cannot argue that such possibility does not materially impact the venue decision or is remote, in particular where they're trying to convince the committee and this Court to use estate resources to achieve that very outcome. The debtor's effectively arguing for a ruling on appeal, but the debtor is an affiliate of Acis, in which case the current Chapter 11 proceeding should be in Dallas, Texas.

Fourth, Your Honor --

THE COURT: Well --

MR. CLEMENTE: Yes, Your Honor.

THE COURT: -- let me interrupt you for a moment, because that hasn't happened. As we sit here today --

MR. CLEMENTE: That's correct, Your Honor.

THE COURT: -- they're not affiliates. There seems to be an assumption that, were this case to be transferred to the Northern District of Texas, it would be assigned to -- sorry, I'm losing my notes --

MR. CLEMENTE: Judge Jernigan, Your Honor.

THE COURT: Jernigan, yes. Thank you. Sorry. I know Judge Jernigan fairly well.

But if they're not affiliates, isn't the case subject to random assignment under the normal procedures in the Northern District of Texas? And if it's not assigned to Judge Jernigan, don't your arguments about judicial knowledge and experience in connection with this case fall away because nobody other than Judge Jernigan has that special knowledge in Texas? And all -- what other colleagues would be able to do there is simply walk down the hall and talk to her. And of course, I can pick up the phone and talk to her any time, as well.

So I'm just teasing out this assumption that definitely feels to be behind everybody's arguments, that she's going to get this case. Is there anything in the record that would support that? Is there some sort of rule I'm not aware of in Texas or that I'm -- am I assuming something that's not consistent with practice down there, which is that this case would be randomly assigned?

MR. CLEMENTE: Your Honor, I believe you are correct in the sense that the case would be randomly assigned, but I believe Your Honor could look at -- as I understand, there are three judges located in the Dallas court district; one is obviously Judge Houser. I could be getting the name wrong. But she's overseeing the Puerto Rican proceeding --

THE COURT: Um-hum.

MR. CLEMENTE: -- so her docket is clearly beyond --

THE COURT: She's also --

MR. CLEMENTE: -- full.

THE COURT: -- about to retire, so I don't even know if she's taking new cases.

MR. CLEMENTE: Correct. So that leaves two judges, Your Honor. And we understand -- perhaps Acis' counsel would be able to expand on that, given their familiarity with the Dallas bankruptcy court, but that judge is not being assigned new cases, given a circumstance with that particular judge.

But to answer your direct question, Your Honor, I believe you are correct; it would be a random assignment. But we do believe that there is a high probability it would wind up with Judge Jernigan.

THE COURT: But it might be a pool of one; right?

MR. CLEMENTE: That is correct, Your Honor. And even if it wasn't, I think, clearly, for all the reasons we'll discuss, we would have a very strong case to make that it should be transferred to Judge Jernigan, even if it initially got somebody else on the --

THE COURT: Well, you know, I mean, if a judge were a lawyer, a judge couldn't have both these cases. A judge (sic) couldn't have a case with two warring former affiliates, because it would create a conflict of interest. Now, those

rules don't apply to judges. We're assumed to be above all that. But -- since we don't have clients. But it does -- it might inform someone's decision about do I really feel comfortable having Acis and Highland, given the situation -- I mean, they wouldn't be jointly administered, certainly, of course. They're --

MR. CLEMENTE: That's correct, Your Honor.

THE COURT: Again, they're not affiliates, at least as we stand here today; although the debtors are trying to change that, purportedly. It might create a situation where a judge might take that into consideration in deciding whether to have the case or not. And I --

Now, we deal all the time with jointly administered affiliated cases, right, because there's always intercompany debt --

MR. CLEMENTE: That's correct.

THE COURT: -- and we all just assume it away (ph.).

MR. CLEMENTE: That's correct, Your Honor.

THE COURT: But this is a little different in that they're not affiliates.

MR. CLEMENTE: I do think, Your --

THE COURT: Again, she would -- the judge wouldn't be required -- Judge Jernigan wouldn't be required -- it's not a recusal issue. It's not a disqualification issue. It's just a -- sort of something to think about in making the decision.

MR. CLEMENTE: I don't disagree, Your Honor. I do think Your Honor hit on it, though. Bankruptcy judges are unique in that perspective that they're put in situations all the time where a decision may impact one particular entity to the detriment of another entity that's also before Your Honor in connection with a particular bankruptcy proceeding.

THE COURT: Yeah.

MR. CLEMENTE: With that, Your Honor, I'll continue to move forward.

THE COURT: Yeah, please.

MR. CLEMENTE: Fourth, and this gets back to the point we were just discussing with Your Honor, we do not believe there's any credible dispute that the Dallas court has already upped the learning curve relative to this Court. Again, not that Your Honor wouldn't be able to come up to speed and that Your Honor has tremendous capacity to do that, but the record is clear, from our perspective, that the Dallas bankruptcy court has already had to wrestle with issues involving the debtor. There has been extensive proceeding (sic) in the Dallas bankruptcy court, not just the bankruptcy court but also the district court, with respect to the Acis case.

There are several written opinions, again, that Your Honor can take judicial notice of and which are also in the record, that provide, after an extensive and developed factual record, that Acis only operated through Debtor Highland -- the

debtor, Highland. It is clear that the Dallas court had to develop an understanding of how the debtor's complex business worked. It is the same business as the debtor engages in here, albeit a subset.

That's consistent with Mr. Sharp's testimony. Mr. Sharp didn't say that they no longer are in the CLO business. He characterized it in a certain fashion, but the debtor clearly still manages and advises CLOs. That is a part of the debtor's business. That is what was at issue in the Acis proceeding. And also, as Mr. Waterhouse testified to quite clearly in the rebuttal, and as Mr. Sharp testified to in the cross, it's the same principal actors: Mr. Dondero and others on his management team.

Your Honor, this case, although the idea is to get a fresh start, we believe will necessary require a backward-looking review of the facts. And the Dallas court has upped the learning curve from that perspective. The committee recognizes that the Dallas court would take time and determine issues as presented to it. And depending on the issue, the past experience of the court will have varying degrees of relevance. But that experience is nonetheless important to the committee to ensure maximum efficiency, with an entity that has demonstrated itself to be highly litigious, Your Honor. One needs only to review the top-twenty list of creditors, made up largely of law firms and other professionals, to make the

determination that the debtor is highly litigious, as well as the record in this proceeding.

So Your Honor, those four facts, we believe, are unique, and we believe that they strike in favor of transferring venue to Dallas. I do want to walk through some of the arguments we made in our papers, as well, but I wanted to highlight what we believe are truly distinguishing features of this particular situation.

Your Honor, as we more fully lay out in our papers, we do believe the convenience of the parties supports transfer of venue. The debtor's nerve center is in Dallas; Mr. Waterhouse was clear on that. Mr. Dondero is the portfolio manager for all of the Highland funds, and he is the one-hundred-percent owner of Strand. Strand's the general partner of this debtor. All decisions run through Mr. Dondero. And it's clear that Mr. Dondero and all of the other key personnel are located in Dallas.

Your Honor, a large number of creditors are located in Dallas; you need not look past the list of twenty largest unsecured creditors to determine that. There are almost a majority of those creditors that are located in Texas. While the committee agrees that the overall organization with several thousand affiliates is complex -- and you'll hear about that as we go on this afternoon -- there's 2,000 affiliated entities with Highland -- the debtor is only Highland. And so the idea

that there may be offices in far-flung jurisdictions, those are not debtor offices.

Your Honor, the interests of justice also support the transfer of venue. The Dallas bankruptcy court has clearly invested time and resources that are applicable to this debtor. In this context, the learning curve that is referred to in the cases clearly favors transfer of venue to Dallas. Although this case has been pending for a while, Your Honor, there's only been a first-day hearing with very limited relief granted, and one brief status conference.

There are also economic efficiencies in Dallas. Dallas is convenient for all debtor employees. Yes, people can get on planes, but it's hard to argue that being a mile-and-a-half away from the courthouse isn't more convenient.

THE COURT: I don't know. Parking's tough.

MR. CLEMENTE: And perhaps an overnight trip is helpful for the family life, Your Honor. It depends.

Dallas is convenient for the professionals. It's easy to fly in and out of Dallas, as we point out in our papers, Your Honor. There's no real, I believe, disagreement that Dallas would not be convenient.

Additionally, Your Honor, and we think that this is a unique factor as well, if the long history of Highland's litigious nature is any indicator here, there will be discovery disputes. And under Rule 45, contested nonparty discovery

would likely occur in the Northern District in Texas, in Dallas. Given the massive number of nondebtor affiliates -- again, we only have 1 box here; there's, like, 2,000 others. It is highly likely that nonparty discovery will become an issue.

The fact that -- I heard Mr. Sharp testify in his proffer that he believes he and Mr. Caruso will provide all of the testimony. That's great and good and well for him to think that. I think the committee's going to take a different view of that, Your Honor.

Our own limited history in this case shows the relevance of Dallas. Two of the three depositions occurred in Dallas. I believe we informed Your Honor of that on the status call that we had. And the third didn't, only because we believe Mr. Sharp was not able to travel to Dallas.

The justice that the debtor seeks in the Acis case, Your Honor, yields a result that this places -- excuse me, Your Honor. The justice that we talked about in the appeal with respect to the Acis confirmation order yields a result that places this debtor in the Dallas bankruptcy court, which is also in the interest of justice.

So, Your Honor, we believe there are several unique factors. We believe that the traditional factors, as we lay out in our papers, support the transfer of venue. And I wanted to just briefly touch on some of the objections that the debtor

raised to our venue motion. First, the debtor thinks too little of the Dallas court, in asserting that we're trying to gain some type -- the committee is trying to gain some type of litigation advantage. We have no doubt, as Your Honor has tremendous respect for the Dallas court, that the Dallas court will take each issue as it comes to it, without prejudice or predetermination. History and experience doesn't mean prejudice or predetermination; it just means familiarity, Your Honor. That's all it means.

Our point is simply that the Dallas court clearly had to spend time wrestling with the debtor, how it operated, and its opaque structure. And let me spend a second on how. As we point out in our reply and, again, as the record is clear based on the published opinions, Acis had no employees; it was a box. And it subcontracted its management services to the debtor. The Dallas court examined that contract, that subadvisory agreement that Mr. Sharp and, I believe, Mr. Waterhouse referred to, and had to become familiar with it. That's clear from the published opinions. And the debtor has numerous other similar contracts.

The Dallas court also made determinations -- and these, again, are in published opinions -- whether certain of the debtor's contracts with Acis were personal-services contracts. Again, they may differ, Your Honor, in terms of the specifics, but these are clear examples of where the Dallas

bankruptcy court had to wrestle with contracts of Highland, the way Highland operated, and the way that it was managed.

Additionally, Your Honor, on the point of litigation advantage, as I thought about this, I think the debtor's, sort of, arguments regarding a litigation advantage, frankly, worked the other way. If I may, here, for a second, Your Honor. Mr. Dondero is the sole controlling party, as the testimonies made clear. He's based in Dallas. As we demonstrated in our papers, Dallas is clearly the most efficient and convenient forum for the creditors. And the creditors have sent this message loud and clear through this motion to transfer and the lack of any party affirmatively supporting the debtor and venue in Delaware.

Mr. Dondero, in our view, as he has shown in the past, consistently makes decisions that are in his best interest, potentially fleeing from a jurisdiction and not his creditors. And we believe that fleeing from the Dallas court, that is, steps away from his office -- and that is convenient for his creditors and, frankly, seems to be the most logical choice of venue -- again, understanding -- we don't dispute that the debtor is a Delaware limited partnership. We're not disputing that. But we're talking about what's logical. That's the point that I would like to make here, Your Honor.

Again, back to --

THE COURT: Well, I mean --

MR. CLEMENTE: Yes, Your Honor.

THE COURT: -- I mean, a cynic -- and after almost fourteen years, maybe I'm becoming one; I don't know. But a cynic would say -- and not necessarily badly (ph.), that both sides want -- are interested in forum-shopping; the debtor fleeing, obviously, adverse rulings in Texas, and the creditors fleeing Delaware to go back to the home of adverse rulings against the debtor in Texas. And it's six one, half dozen the other. However, at least the cases -- or some of the cases say that the debtor is entitled to some deference in its forum-shopping, as opposed to the creditor, in their opposition, in their forum-shopping. I'm not sure I buy that. And as a matter of fact, I've ruled previously that there is no deference --

MR. CLEMENTE: Correct.

THE COURT: -- that should be afforded to the debtor, in the EFH case. But --

MR. CLEMENTE: That's correct, Your Honor.

THE COURT: -- I just throw that out there.

MR. CLEMENTE: And I believe Your Honor also made a point, in the EFH ruling, regarding the support of the various parties for the venue. And so I believe that is actually a very strong factor that weighs in favor of transfer to --

THE COURT: Well, and -- yeah, I mean --

MR. CLEMENTE: -- Dallas.

THE COURT: -- and that case had -- the government of Texas or the committee, or both, supported venue. That case probably, thankfully, would have been sent to Texas, freed up five years of my life, and twenty appeals and --

MR. CLEMENTE: You're stronger for it, though --

THE COURT: -- everything else.

MR. CLEMENTE: -- Your Honor.

THE COURT: Yeah -- I don't know about that. I'm heavier, that's for sure.

MR. CLEMENTE: I wish I could blame that for my weight, Your Honor, but I can't.

Your Honor, back -- very briefly, because we did touch on it already. We do believe that the Dallas court experience is highly relevant, contrary to what the debtor remarks in their objection. The debtor again tries to cast the Acis bankruptcy as being narrow and only involving CLOs. Again, the testimony, I believe, showed, in -- shows, in point of fact, the debtor does manage a significant number of CLOs. Even if they are in liquidation, there are still decisions that are being made. And therefore, exposure to how the debtor operated with respect to CLOs is highly relevant.

Your Honor, I already mentioned, so I won't repeat myself, that Acis was a box and it had no employees, and therefore, obviously, the court had to look through to what was going on at Highland in terms of how the debtor was managed.

Your Honor, the CRO, unfortunately, I believe, for the debtor, does not cleanse the venue choice. The CRO was not around. The CRO didn't decide venue. And as clear from the testimony, the CRO reports to Mr. Dondero. Nothing has changed. There has been no management changes. I believe that was also consistent with the testimony. And everybody still reports to Mr. Dondero, and he's located in Dallas, and Dallas is the nerve center.

Additionally, as I mentioned, the cases will be very much about the past, unfortunately, Your Honor, a time when the CRO was not involved, and about transactions and conduct engaged in by the debtor and Mr. Dondero in the run-up to this bankruptcy.

In short, I believe the CRO issue is a red herring, Your Honor; it doesn't erase the history the Dallas bankruptcy court has with the debtor through the Acis proceeding, and it doesn't erase the history of the decision-making process that the debtor engaged in, in the past and currently engages in today.

With that, Your Honor -- we already had a colloquy about how we do not believe the Dallas bankruptcy court is conflicted, so I won't spend any further time on that. But I would like to sum up. Your Honor, let me be very clear. We have the utmost respect for you and for this Court, so I want to make sure that Your Honor is very clear on that. However,

the committee respectfully believes that this case presents the unique combination of facts which dictate that the transfer of venue to the Dallas bankruptcy court is appropriate.

THE COURT: You don't need to worry. My ego assumes you have respect for me.

(Laughter)

MR. CLEMENTE: Thank you for that, Your Honor. Unless Your Honor has any questions, I'll sit.

THE COURT: I do not. There may be others in support who want to be heard.

Mr. Pomerantz (sic).

MR. LUCIAN: Your Honor, for the record, John Lucian of Blank Rome, local counsel for Acis.

Just during the break, we had a binder made for Your Honor so that the exhibits that Ms. Patel had handed up that were admitted -- I know Mr. Morris has no objection to us handing that up, Your Honor. It's the -- 1 through 26, with the ones that were not admitted. This will save you from --

THE COURT: Is that these?

MR. LUCIAN: Yeah. That's the -- you got them in the binder now.

THE COURT: Okay. Is this in there --

MR. LUCIAN: Yeah.

THE COURT: -- the email?

MR. LUCIAN: Yes; 26, yes. If you want to switch to

that. Perfect.

MS. PATEL: Thank you, Your Honor. For the record, Rakhee Patel on behalf of Acis Capital Management, L.P., who joined in the committee's motion. And I will make reference to those -- certain of those documents. I'm generally loathe to hand up big binders or big stacks of documents without telling the Court of what's been handed up. So, very briefly, Your Honor, I will say, Exhibits 1 and 2 (sic) in the binder are the involun -- the issue -- I'm sorry, the opinion issued by the Dallas bankruptcy court, in connection with the involuntary trial, and Exhibit number 2 is the opinion that was issued in connection with confirmation of Acis' plan. I would also point the Court to Exhibit Number 17, which is the actual confirmation order in Acis Capital Management. And I'll make reference to one other exhibit as I go through my presen -- or a number of other exhibits, but -- one additional ruling by the court, as I go through my presentation.

THE COURT: What was the date of -- oh, okay. Never mind. So the confirmation was late January?

MS. PATEL: Yes, Your Honor. January 31st, 2019. And the plan went effective on February 15th of 2019.

THE COURT: Okay.

MS. PATEL: And the Highland bankruptcy, I believe, was just a little bit over eight months later.

And, Your Honor, I'll try not to duplicate necessarily

what the committee did, and I will promise to keep this as brief as I can. I'm happy to answer any questions, because standing here before you is the counsel -- at least the bankruptcy counsel that lived and breathed the Acis case from the date that they were filed on January 30th of 2018, through today.

Now, Your Honor -- and along with my co-counsel, Mr. Shaw, who has been living and breathing, frankly, the issues longer than I have, even.

Your Honor, I will repeat something that was in our moving papers. And I know Your Honor and Your Honor's team has probably read all the moving papers. but I think this bears repeating, and that is that this case is unique. It is, in my mind, exceptionally unique. These facts are so unique, Your Honor, that I would venture to say I don't think that this is necessarily a case that would even possibly or remotely or even tangentially open any floodgates, because these facts are so different from the typical motion to transfer venue.

Your Honor, touching quickly on the burden-of-proof issue that Your Honor referenced in your colloquy with Mr. Clemente. Your Honor, Acis concedes, obviously, the burden of proof is clear that it's the preponderance of the evidence. And I won't go through ad nauseum all of the factors. I know the Court is exceptionally familiar with all the factors on both the convenience-of-the-parties and interest-of-justice

side. But I would just note that, at least in the Court's prior rulings, you've said that the factors are not really a scorecard, that we're not counting three factors versus three factors, or four versus two.

And I would just --

THE COURT: Well, that follows with my fundamental tenet, which is that any legal test with more than three factors is useless. It's just a -- it's just a question of discussion.

MS. PATEL: I think -- and I think this Court has wide discretion with whether to transfer this case or not.

Your Honor, one final quick point that I'll call the -- kind of the four corners or setting the table, for purposes of go-forward, is back to the reference to the -- that there's no real deference, necessarily, to the debtor's choice of venue. That's sort of subsumed in the burden of proof. The movant bears a burden of proof and, if they meet the preponderance of the evidence, then the burden shifts. And that's really kind of where the debtor's choice of forum weighs in.

Now, Your Honor, one other quick point is that there's been a lot of discussion in the objections and the responses and the replies, indicating that this whole issue is about Acis as a creditor. And what I'm here to say, Your Honor, is that this, actually, the issue, the motion to transfer venue, is not

really about Acis as a creditor. And I'm here representing Acis as a creditor. This has been painted as there's one creditor that's driving this, and that's Acis. That's just simply not the case, Your Honor.

The reality is that you've got hundreds of millions of dollars or claims represented by the committee, as a fiduciary to those claims, that have made this motion. This is not Acis' motion. Yes, we did join with respect to it. And really, it has -- that has more to do with the fact that we're the Texas folks, we're the Texas creditor. And we -- again, I and Mr. Shaw lived and breathed the Texas cases. And I'm here to stand before the Court and answer any questions you may have with respect to what happened, what transpired, but, more importantly, what could happen on a go-forward basis.

Your Honor, it's important -- and I -- again, harking back to this concept of this is unique. As Your Honor noted in EFH, had the committee signed on, had the Texas comptroller signed on, perhaps that outcome would have been a little bit different. But here, Your Honor, we've got the committee moving for transfer of venue. And I think that's really significant. And I'll go through in a little bit sort of the debt stack that we're dealing with here, and you'll see that, hands down, the committee is the fulcrum debt here. It is the fulcrum debt, Your Honor.

Your Honor, one final quick note on forum-shopping.

And there's been conversation with respect to the committee's forum-shopping, the debtor's relationship. Look, I've read Your Honor's prior opinions and I really do think the issue boils down to -- I think it's probably neutral with respect to both sides. As Your Honor pointed out, the debtor has the ability to choose the state of its incorporation as its venue for filing of bankruptcy. And also, the committee has the ability to move, to transfer, pursuant to 1412, to a place that is the interest of justice and the convenience of the parties. I really view that as being the -- there should be no negatives cast on, frankly, either side, with respect to forum-shopping, because it's kind of invited by the structure of the statute.

So if the case isn't about Acis as a creditor, what is this case about? Well, I -- or what is this motion about? Here I really do think that -- at its heart, that this particular motion to transfer, and probably motions to transfer in general, boil down to the bankruptcy case itself. So here that would be -- this is all about Highland's bankruptcy and where it should be administered, what makes sense.

And, Your Honor, I want to go through a couple of different subtopics on this. First I want to talk about the business lines that the debtor engages in. What does it do? And this is all from the -- what I'm going to refer the Court to is all included in the first-day declaration of Mr. Waterhouse, which is Debtor's Exhibit O.

And, Your Honor, in Mr. Waterhouse's declaration, he goes through the three kind of general lines of the debtor's business. First is proprietary trading. And that involves sort of trading with the debtor's money or leveraged money in certain brokerage accounts. And I really think that proprietary trading is probably that line of business -- when we're thinking about which court is best suited to oversee that line of business and what's going to happen with respect to it, I think that's really neutral. I think both Delaware and Dallas could adequately handle that issue.

The issue really becomes a lot more focused, though, when we look at the other two lines of business. The next line of business is investment management services. And this is -- and a big piece of that is the debtor's operation of its CLOs or collateralized loan obligations.

If the 2018 financials -- again, I believe they're contained in debtor's exhibits -- if you take a look at those you'll see that as a part of investment management fee revenue, a lot of the revenue that was generated is related to the debtor's operation of eighteen CLOs along with some managed separate accounts, et cetera.

Your Honor, the CLO piece and the separate accounts are issues that the Dallas court was faced with through Acis' bankruptcy and Highland's management of it. And I'll borrow from Mr. Clemente his phrase: Acis was effectively a box. It

had no employees of its own. It only had two officers, Mr. Dondero and Mr. Waterhouse, who was the treasurer of Acis, until their resignation shortly after the appointment of -- shortly after the involuntary filings and the appointment of a trustee.

Now, Your Honor, the other -- the last piece that's also involved is shared services. So we've got investment management, and there's subpieces of it. And I won't represent to the Court that is Judge Jernigan familiar with every aspect of Highland's investment management services? No, likely not. But neither is this Court. This Court is still, very much so, on the learning curve with respect to that.

And I would submit, Your Honor, that Judge Jernigan is frankly just further along that learning curve with respect to the investment management services.

On shared services, Your Honor, as Mr. Clemente referenced, the opinions are very clear -- again, Exhibits 1 and 2 -- with respect to there is -- it's clear that Judge Jernigan had to evaluate shared services. And I'll kind of summarize what the structure of what Judge Jernigan had to evaluate was. Again, Acis is a box. It was provided its services by Highland, pursuant to two key agreements: a subadvisory agreement and a shared-services agreement. And that shared-services agreement is relatively generic. And all that is is the subadvisory -- I like to think of it as that's

the thinking brain stuff. That's the investment advisory. Does this comply with SEC guidelines? Should these trades be made? What does the marketplace look like?

Shared services, on the other hand, Your Honor, are all that middle- and back-office typical type stuff. There's no real rocket science with respect to it. It's just providing infrastructure: accounting, legal, bookkeeping functions, all those things that any sort of generic business would provide.

And again, that is something that Judge Jernigan is just more familiar with. She is familiar with Highland's business modus operandi.

And, Your Honor, if you look sort of across the Highland structure, you will see that Acis really was just a little microcosm. It's a little template, because it gets repeated throughout the Highland empire.

And one of the exhibits -- and forgive me; I didn't bring up the other exhibit list, but multiple parties have designated it, and it's the entities list. And there's 2,000 entities, approximately. I didn't count them all up. But that's a number that's been thrown around: 2,000 entities under this. And they are all each little microcosms. Certainly, Judge Jernigan is further along with respect to the Acis microcosm, but also with respect to the template as well.

Your Honor, with respect to then, therefore, economy or -- judicial economy or efficiency, again, Judge Jernigan,

further along the learning curve.

Your Honor, now turning then to the debt stack, as I had referenced earlier -- again, this is all set forth in the declaration of Mr. Waterhouse -- you've got two secured lenders, Jefferies and Frontier. And no one's heard with respect to -- from them with respect to their position. Your Honor, these are two creditors that are vastly oversecured, and so really they -- I'll put them as sort of neutral with respect to what's going to happen in this bankruptcy case.

Then the next item in the debt stack that Mr. Waterhouse identifies is Highland CLO Management. Well, Your Honor, it's a note that was transferred -- Highland is the obligor on the note. It's about nine-and-a-half million dollars. And it was a note that was previously held by Acis and that was transferred to an entity by the name of Highland CLO Management, by Mr. Dondero.

Highland CLO Management, in turn -- Mr. Waterhouse references that there's sort of -- Highland doesn't have a beneficial interest with respect to it. But if you look at the retention applications that are set for hearing a little bit later today, you'll see that actually the debtors (sic) are claiming there is an interest in this, that the debtor has an interest in making sure that Highland CLO Management has a defense when it comes to the issue of was that transfer from Acis to Highland CLO Management a fraudulent transfer.

And again, these are issues that Judge Jernigan has had to grapple with all throughout the bankruptcy case. There have been no -- there has been no adjudication that it was a fraudulent transfer; but certainly she's had to evaluate it in connection with four injunctions that were issued in connection with the Acis case.

First there was a -- excuse me -- a sua sponte injunction. Second there came an ex parte injunction. Third there was a preliminary injunction. And then fourth there was a plan injunction. And that plan injunction, Your Honor, is embodied in Exhibit Number 17. And again, all of these transfers and transactions -- part of the debt stack of Highland has been evaluated by Judge Jernigan.

Last in the debt stack, but certainly not least, Your Honor, we have the general unsecureds. And Mr. Waterhouse, in his deposition that was held in Dallas, estimated that perhaps the general unsecureds could be upwards of two billion dollars, all told.

Now, just looking at the twenty largest, we're still in the hundreds of millions, and we don't have the benefit of schedules yet. But this is -- this is the big dog. This is the big layer of debt. This is who is really the fulcrum here.

And keep in mind, Your Honor, this is a free-fall bankruptcy. No one knows where this is going to go. At the first-day hearings, debtor's Counsel referenced that there

could be sales of assets and divestiture of certain things, operational restructuring. There's really no idea where this case is headed. And I think that's significant, Your Honor, because this is an operational restructure or perhaps a liquidation.

I hope not. I hope that this is an operational restructure and that all creditors can be paid either in full or close to in full, but that's significant. And the reason why it's significant here is because, Your Honor, you've got the fiduciary for that fulcrum debt voting with their feet with what could happen -- what should happen on a plan.

And they're saying we think this case should be administered in Texas. And I think, again, going back to what makes this case so unique, I think that's what makes it so unique is that there are -- just from a dollar perspective and volume perspective, the significant creditors and the committee with respect to who's a fiduciary telling you, Judge, we think this case should be administered in Texas. And those votes are going to be important with respect to any exit that happens here.

Your Honor, I'll hit sort of on another factor, the sort of forum's interest or a local interest in the controversy. And I concede, clearly -- and I think Your Honor has referenced in the past -- Delaware, when it -- when an entity is organized under Delaware law, that the forum state

has an interest in protecting its entities. However, I will say, I think what's different here is --

THE COURT: Say that again?

MS. PATEL: I'm sorry, Your Honor. I probably misstated that. That the state of incorporation has an interest in entities that are --

THE COURT: Yeah, but --

MS. PATEL: -- formed under its state's law.

THE COURT: -- you're in the wrong court for that. That's state court. This is --

MS. PATEL: I'm sorry?

THE COURT: -- the --

MS. PATEL: Oh, yeah.

THE COURT: You're in the wrong court for that. I don't care about that. This is --

MS. PATEL: All right.

THE COURT: -- this is federal court.

MS. PATEL: Fair enough. I'll take that one, then.

THE COURT: This is federal court. That's for the chancery and the governor.

MS. PATEL: Well, Your Honor, and going back just to the issue of the unique factors here, usually, Your Honor, in a motion to transfer venue, you have what I'll call relatively similarly situated courts, certainly if you've got a transfer-of-venue motion that was filed as early as the one that was

filed in this case, within the first few weeks of the case, and within, I believe, two days of the committee's formation.

That's just not the scenario here, Your Honor. You have a bankruptcy court in Texas who is familiar with various aspects of the debtor's business. Is it familiar with every aspect of the debtor's business? No. But that certainly can't be said as to the Delaware Court either, that you are familiar with every aspect of the debtor's business.

Your Honor, in Texas there's not only a bankruptcy court, there's a district court who is familiar with all of the -- with aspects of the debtor's business, and that is the Honorable Judge Fitzwater.

And what I will say -- Your Honor was asking questions with respect to the judge -- the bankruptcy judge that it would be assigned to. I'm happy to address those from my perspective. But what I will note is that every appeal that stemmed out of the Acis bankruptcy case -- and there were in excess of ten -- every single one was transferred ultimately to Judge Fitzwater for adjudication.

So even if -- even if we look just one layer up from the bankruptcy court to the district court, Judge Fitzwater is intimately familiar. And now we've got three -- in connection with the Acis cases -- three appeals that are pending before the Fifth Circuit, two of which involve Highland or a Highland-related entity.

Your Honor, I want to quickly touch on the --

THE COURT: Is it the practice in the -- it's the practice in our district court that once a district judge is assigned an appeal in connection with a bankruptcy, any further appeals in that bankruptcy go to that district judge. Is that the practice in Texas?

MS. PATEL: It's the practice, Your Honor. I don't believe that there's a specific local rule that says that that will happen, but that's functionally what happens. And sometimes you have to make a motion to transfer between two courts, but invariably, it usually goes to sort of either the first-filed court or kind of the first court to really get into a substantive issue.

THE COURT: Okay.

MS. PATEL: Your Honor, I'll touch on a couple more quick points. It is offensive to me when I read through the debtor's pleadings and that there is an implication that the Dallas court is somehow biased. I think of Judge Jernigan and I think of this Court and I think of virtually every bankruptcy court that I've ever had the privilege of appearing before as being fair and impartial. And this concept of bias, that's only grounded in the fact that the debtors have -- or I'm sorry -- the debtor has lost a few.

And I will say, just to kind of forestall that easy conclusion based on the opinions, I would note, in Acis'

exhibits, if you look at Exhibit Number 12, that is -- it's an email that the court sent in connection with Acis' first confirmation hearing. And that was a confirmation hearing that occurred in August of 2018. And the court ultimately denied confirmation of the first sort of plan. And there were kind of three sub-plans. But the court denied it.

And so again, I'm offended that there would be even an implication that the court is somehow biased, because this isn't a scenario where there have been only adverse rulings to Highland in connection with the Acis bankruptcy case. Judge Jernigan has called the balls and strikes as she sees them, Your Honor.

Your Honor, I'll conclude with the following, which is that I would venture to guess that if this Court were in sort of -- if we reversed the scenario and this Court had expended hundreds of hours, hundreds of pages of opinions, untold hours of its courtroom staff's time, going through and poring through an exceptionally voluminous record, over 100,000 pages, and having expended over forty days of courtroom time, with that significant of an interest in the case and that expenditure of time, I would venture to guess that this Court would want this case transferred back to Delaware, if it had been filed anywhere else.

And so I would submit to Your Honor that this Court should -- this case should be transferred to Dallas for all of

the reasons proffered by the committee and as joined by Acis. Thank you, Your Honor.

THE COURT: You're welcome.

Anyone else in favor of the motion?

All right. This time it will be short. We're going to take a very short recess, and then I'll hear from the debtor.

(Recess at 11:50 a.m. until 12:00 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated. I apologize. I know it's getting warmer and warmer in here. And we're trying to contact -- we're trying to find someone in Maintenance who's working today.

MR. POMERANTZ: It's usually motivation to get the hearings done quickly, in my experience.

THE COURT: Yeah, it's -- if I take off my robe, don't be offended. I do have clothes on underneath.

MR. BOWDEN: Thank you.

THE COURT: I heard you, Mr. Bowden.

All right, go ahead.

MR. POMERANTZ: Good afternoon, again, Your Honor. Jeff Pomerantz, Pachulski Stang Ziehl & Jones, on behalf of the debtors-in-possession (sic). Before I go on to my prepared remarks, I just want to address a couple of the points that were raised by Mr. Clemente and Acis' Counsel.

First, we are not aware of any formal statement that Judge Hale, in the Northern District of Texas, is not taking cases. So I think Your Honor's point was a good one. There's no definite -- there's no requirement, and it may or may not be that this case gets transferred, if Your Honor were to transfer it.

Second, Your Honor, Highland has -- there have been appeals made not only from confirmation of the plan but also from the involuntary itself. If the involuntary appeal succeeded, there wouldn't even be a bankruptcy case to be related to. And in any event, the case law says that events that may or may not happen in the future are not really relevant to the venue analysis.

Lastly, Your Honor, Mr. Clemente started by saying he thinks the facts are largely in dispute, and you heard Counsel then go through in detail, as did Acis' Counsel, about how there's no dispute that Judge Jernigan has a learning curve.

Of course they need to say that because that is the focus and the crux of their venue-transfer argument. As I will demonstrate in my comments and as the evidence is before the Court, other than the opinions that were written and other than the amount of time the court has spent, there is no real nexus between what happened in that case and what happened in this case.

We have no doubt that Judge Jernigan learned all about

Acis, learned all about Acis' relationship to Highland. But the real issue before Your Honor is what does that have to do with this debtor, this debtor's assets and liabilities, and this debtor's operations. And as my comments will show, we think that's a significantly overblown argument.

Your Honor, during their presentation, Counsel really strayed a little bit from what the motion and the joinders sort of said. There they went through a painstaking analysis of the various factors supporting venue. I know Your Honor said that over three factors, you don't find that helpful, but the courts have relied on a series of factors.

And I think the reason why they have strayed away from that and focused on the committee being the one to support the transfer-of-venue motion and the facts of the Acis case is because when you pare it down, the actual factors demonstrate that there is no way the committee can carry its burden to demonstrate that venue should be transferred.

However -- Your Honor pointed to this at the beginning, in mentioning comments about forum-shopping -- the committee and Acis are really being disingenuous, and they have not told you the real reason that they want the case before Judge Jernigan.

At the first-day hearing, Your Honor, Acis said they intended to file a motion for an appointed trustee. The committee has told the debtor it intends to file a motion to

appoint a trustee after this hearing. The motion has not yet been filed, Your Honor, because they want Judge Jernigan to rule on that motion. And it's not because she's familiar with this debtor's business, this debtor's assets, or this debtor's liabilities, because she generally is not. It is because she formed negative views regarding certain members of the debtor's management that the committee and Acis hope will carry over to this case.

The convenience of the parties and the interests of justice and how this case is so unique are just a pretext. They want a trustee to run the debtor, and they want Judge Jernigan and not Your Honor to rule on that motion. That, Your Honor, is not a proper reason to transfer venue, but rather a transparent litigation ploy.

Similarly, Acis also wants the case to proceed in its home court where it has enjoyed success in litigating against the debtor. Your Honor mentioned the conflicts-of-interest theories. They're not just conflicts of interest between two jointly administered debtors. These go to the crux of what the Acis case is about and significant claims against the debtor.

The Court may ask, appropriately -- and the Court did -- why would the debtor file the case in Delaware? Chapter 11 is all about a fresh start. The debtor recognized concerns that the creditors had with certain aspects of its pre-petition conduct, and proactively appointed Brad Sharp as chief

restructuring officer with expanded powers, to oversee the debtor's operations.

Mr. Sharp worked with the debtor and Counsel to craft a protocol for transactions that would be subject to increased transparency. The debtor didn't have to do that. As Your Honor mentioned at the first-day hearing, the debtor operates its business in the ordinary course. But given the circumstances surrounding this case, given the history, we felt, and the CRO, importantly, felt it was important to get on the table what the debtor, through the CRO, believed was ordinary and what was not, so we could have a transparent discussion, discussion that, while we've made headway with the committee, we have not yet been able to come to an agreement.

The debtor filed the case in this district because it wanted a judge to preside over this case that would look at what's going on with this debtor, with this debtor's management, this debtor's post-petition conduct, without the baggage of what happened in a previous case, which contrary to what Acis and the committee says, has very little to do with this debtor.

These form insufficient grounds, Your Honor, to overturn the debtor's choice of venue, and the motion should be denied.

I would like to now walk through the statutory analysis, something that Counsel avoided, because again, I

think it highlights the weakness of their argument.

It is clear that the Delaware venue is proper, and 1408 says the places where a Chapter 11 debtor can file the case. As the vast majority of debtors who file cases in this district, the debtor filed here because it was domiciled in Delaware. It is a Delaware LP. But it goes further than that. 99.94 percent of its LP interests are owned by Delaware entities. And the general partner, Strand Advisors, is a Delaware general partner.

While many cases, Your Honor, before this court, rely on the domicile of one affiliate to bring other non-Delaware related affiliates before the court, that's not the case here. All you have, virtually, are Delaware entities, through the ownership structure.

As I will also discuss in a few moments, Your Honor, domicile is not the only connection that this debtor has to this district, as significant litigation matters involving the debtor, including those commenced by committee members, that was the catalyst to the filing, are pending in Delaware. Accordingly, the committee acknowledges, as they must, that Delaware is, of course, a proper venue.

However, they rely on 1412 which sets forth the standard -- test that the movant has to meet in order to transfer venue, either for the convenience of the parties or the interest of the justice.

And courts, including the written opinions in this district by your colleagues, most often cite to the six factors in the CORCO decision in the Fifth Circuit in 1979. And as Judge Gross, in his 2016 opinion in Restaurants Acquisition makes clear, the movant bears the burden of demonstrating that the factors strongly weigh in favor of a transfer.

Similarly, Judge Gross stated in that case -- and I know Your Honor may not fully subscribe -- that courts generally grant substantial deference to the debtor's choice of forum.

And in the case here, where not only do you have the debtor is a Delaware entity, but virtually all of its holdings are well -- are Delaware entities as well, it is even more appropriate to defer to the debtor's choice of forum. As Judge Walsh said in his 1998 opinion at PWS Holding, it is a fundamental legal tenet that every citizen of a state is entitled to take advantage of the state and federal judicial process in that state.

So the question before Your Honor is whether the facts in this case strongly weigh in favor of a venue transfer such that the Court will disregard the debtor's reasoned business judgment to commence the case in this district?

We submit, Your Honor, that the committee and Acis have not come close to meeting that standard, and the CORCO factors do not support a transfer.

The first one is the proximity of creditors. And the committee is focused on the fact that the committee -- the representative fiduciary of the estate -- has determined that venue is appropriate. But the factor not only looks at the number of creditors, it looks at the dollar amount of the creditors. And if you analyze -- an analysis of either demonstrates that convenience of the parties does not support a transfer of venue in this case.

The debtor has two secured creditors. Jefferies is headquartered in New York City. Frontier Bank is headquartered in Oklahoma. There was reference by Acis' Counsel to HCLOF. Their secured claim is unrelated to the note that was at issue in Acis, and there's nothing in the record to say that that secured instrument has anything to do with the Acis case. Neither of those creditors has weighed in on the motion to transfer venue.

So let's look at the unsecured creditors. Of the twenty that were listed in the debtor's petition, seven have Texas addresses. Five of those are debtor's either current or former law firms. Two of them are in the courtroom today. And as Your Honor I'm sure appreciates, debtor professionals -- former debtor professionals are not usually active in bankruptcy cases. Indeed, none of them filed a notice of appearance in this case.

The other two that have Texas addresses are the claims

related to Acis: the Acis claim and the Josh Terry claim. There are no other unsophisticated creditors that the Court needs to worry about that would not be able to travel to Delaware, as needed.

The two largest unsecured creditors in the top twenty are the Redeemer Committee and Patrick Daugherty, each of whom had pre-petition litigation pending against the debtor that they each commenced in the Delaware Chancery Court. And the arbitration proceeding that preceded the Redeemer chancery court litigation was pending in New York City.

UBS, a member of the committee, listed as number nineteen with a disputed and unliquidated claim, will likely claim it is the largest creditor of the estate. It is based in New York. It has litigation pending against the debtor in New York, and used Latham & Watkins' DC office for that litigation.

And lastly, the fifth largest creditor, Your Honor, Meta-e Discovery, is also on the committee. Where is their address? Stamford, Connecticut.

As Judge Gross reasoned in Restaurants Acquisition, in order to overcome the strong presumption in favor of the venue transfer, a transfer must substantially improve the administrative feasibility with respect to the creditor body as a whole. So the committee sits out there and Acis sits out there saying that it's convenient for the creditors, it's much more convenient in Dallas. Their actions belie their

statements. All this litigation was focused on either Delaware or the Northeast. It is just simply disingenuous for them to argue otherwise.

The next factor, Your Honor, is the proximity of the debtor. And in applying this factor, the courts focus primarily on the parties who appear in court. The debtor retained Brad Sharp, and he has demonstrated its intention -- and the debtor has demonstrated its intention of having Mr. Sharp be the face of the reorganization efforts before the Court.

Indeed, in cases where a CRO is reported, Your Honor, the CRO is more apt to testify in court than any other debtor representative. And I believe Mr. Sharp's testimony, which was uncontroverted, was that he expects that he and Mr. Caruso will provide the bulk of the testimony required from debtor representatives during this bankruptcy case; and that's because the debtor has given Mr. Sharp broad authority to evaluate the propriety of post-petition transactions and to pursue and analyze insider claims.

And at today's hearing the debtor will offer the testimony of Mr. Sharp and his colleague, Mr. Caruso, to support the relief requested. They have developed a substantial amount of knowledge regarding the debtor's assets, liabilities, and operations, in the six weeks they've been on the job; and that knowledge will continue to grow.

And Mr. Sharp has significant experience, as he testified to, being a CRO in cases in this district; and he could travel just as easily to Delaware as he can to Texas.

While the debtor acknowledges that other debtor employees like Frank Waterhouse may be called to testify, as he was today, the involvement of the debtor's personnel in this court is likely to be immaterial. And he was the only Texas person called to testify in this case. And if the committee and Acis felt it was so important that representatives of the debtor be -- it would be easier for them to travel to court, they didn't call any witnesses in today, which is the most important hearing in the case.

Also, Your Honor, our offices, as you know, are in Delaware. And while it's true that we practice all around the country, we would need separate counsel if we were to -- if the case was to be -- to move.

And similarly, the committee retained Young Conaway, which took a significantly active role in the litigation leading up to today. That information and knowledge and expertise would be lost if the case was transferred.

Next, Your Honor, related, is the proximity of witnesses. And a I said, the committee can't demonstrate that witnesses in this case would find Texas a substantially more convenient forum than this court. And you would have expected them to have subpoenaed Texas witnesses if that were so

important.

Location of assets, Your Honor, is one of the CORCO factors. And the committee makes a big point that all the decision-making is in Texas and all the people are in Texas and the office is in Texas. The courts that look at location of assets as being critical typically involve cases that are single-asset real-estate cases, or cases that are small local businesses that have significant regional connections.

But if you look at the debtor's assets here, it's not the case. Their assets generally include financial instruments and investments in a wide variety of public stock; advisory contracts; shared services; and interests in nonpublic hedge funds and private equity funds.

The assets are located throughout the United States and in Latin America, Korea, and Singapore. And the majority of the debtor's liquid assets are in New York. We were not -- we don't dispute the point that there aren't significant people in Dallas and that the offices are in Dallas and all the employees. We don't dispute that. But the assets are far-flung around the country, and the cases, again, that focus on the assets, focus on local expertise that the court will bring to bear, particularly in real-estate cases with respect to valuation. You have nothing of that here.

The debtor intends to use its Chapter 11 to provide breathing room and to evaluate, hopefully in a constructive way

with the committee, how best to maximize value for the debtor's assets through a consensual restructuring; and there's no reason to believe why Texas rather than this court, would be a more appropriate forum for this restructuring.

The last factor, Your Honor, is the economic administration of the estate, which the courts generally point to as the most important factor. And the committee points to five reasons, which is essentially retreads of its previous arguments.

Again, they argue a higher concentration of creditors in Texas and Midwest. That's not the case, as I mentioned. They argue that there's a higher concentration of professionals in Texas and Midwest. And if you look at all the professionals, they're all from national firms; they're all metropolitan areas that practice routinely before this Court. And the concept that the flights being different and the mileage being different is in any way -- is in any way important, is just not -- is just not the case.

People practice in a global, national world, these days. And if that argument succeeded, most of the -- your brethren and yourself would not have much to do, because that argument could support transfers in most cases.

THE COURT: Well, I think really goes to why -- I mean, I know this is the standards that are generally applied, but it's a case from 1979. It's really behind the times. I

don't think the factors reflect corporate practice of bankruptcy reality of 2019.

MR. POMERANTZ: And that's exactly what Judge Gross said in the Caesar's opinion --

THE COURT: Right.

MR. POMERANTZ: -- which is cited in the material, that this argument, given technology, given frequency of air -- ease of air travel, it's just not a relevant factor anymore.

And the two pages that the movants spent in the brief talking to you about how many direct flights there are from LA to Delaware as opposed to LA to Dallas, that, Your Honor, I think is just silly.

The committee also argues that most creditors would need to retain local counsel if they were here. Well, if you look, the case has been pending a month-and-a-half, and other than notices of appearance filed by committee members, there have only been two notices of appearance that have been filed that are unrelated to debtor entities. And one of those is Daugherty, who commenced litigation in chancery court. So the argument that is made typically in cases where they're filed in jurisdictions far off from where the debtor's operating is, is that it'll be burdensome on the mom-and-pop creditor, Your Honor, we don't have mom-and-pop creditors here. And there's nobody out there with material claims against the estate that will not have the ability and have trouble and demonstrated the

willingness to hire Delaware Counsel.

The last argument --

THE COURT: Even when you do have mom and -- again, to comment on reality, even when you do have mom-and-pop creditors in businesses that are very locally focused, general practice today is to make their claims irrelevant, in that to the extent they have avoidance claims, they're paid on the first day. Their real concern is whether the business will continue or not.

Now, it's certainly true that pension claims are important, and proofs of claim are important. But we have many -- all courts have many procedures in place to ensure that those types of creditors can participate without having to go to the courthouse.

MR. POMERANTZ: Yes. So, Your Honor, Judge Gross also mentioned that in the Restaurants Acquisition case, which was a Texas-based --

THE COURT: He's a smart guy.

MR. POMERANTZ: We'll be sorry to see him go, Your Honor.

THE COURT: Yeah, absolutely.

MR. POMERANTZ: Which was a Texas-based restaurant chain that had more of a local flair. But he made the comments Your Honor made.

The last argument the committee makes is that Texas is

more convenient. And this is really the crux, which I'll spend some time over the next few minutes.

Texas is more convenient -- convenient -- because the Texas bankruptcy court, where Acis is pending has, in their words, already expended great time and effort familiarizing itself with the debtor and its operations. You've heard statements like "learning curve". You heard statements about everything that the debtor -- that Judge Jernigan has found out about this debtor, and how important and how helpful it is, and how Your Honor will be behind the learning curve. We just don't buy that, Your Honor.

And aside from that argument, the arguments that the committee makes for transfer are arguments that could be made in any case before Your Honor.

THE COURT: Yeah, I was going to say that's kind of an interesting argument, because actually it assumes Judge Jernigan's going to ignore the rules of evidence in making factual findings, because you're limited to the record before you on a specific motion. And what fact you may have learned with regard to something a person has done, maybe that goes into questions of credibility on cross-examination or direct testimony, but to actually base your decision on a fact that's not in the record for the specific proceeding would be improper.

MR. POMERANTZ: Look, I agree, Your Honor. And the

familiarity with the type of business -- if I wasn't speaking to Your Honor or your brethren or many other judges around the country, I'd say well, maybe there are certain judges who haven't dealt with large financial services company, may not know what a CLO, may not know what a hedge fund is or private equity fund is. I'm very confident that Your Honor has had many cases with sophisticated financial instruments, likely CLO obligations, so that Your Honor not only has a good base of knowledge that would give you the same base of knowledge that Judge Jernigan has, but as we've also found, you are a fairly quick study and that I have no doubt that you could come up-to-speed without very little effort.

So their argument is a grossly overstated interpretation of what the Acis case was about and that what was learned in that case has any relevance. As a part -- as a result of the Acis plan confirmation, Acis is no longer part of the debtor's organizational structure. The debtor owns no equity in Acis. And the debtor no longer provides any advisory services to Acis.

We admit that Judge Jernigan conducted many hearings, and she issued several lengthy opinions, and she heard from a variety of witnesses. And I'm sure Your Honor -- if Your Honor has not -- Your Honor might read the opinions that she wrote that are attached to the exhibits, the plan confirmation opinion, the arbitration opinion, the involuntary opinion; and

you will conclude, I believe, as I have concluded, that ninety-five percent of that stuff has nothing to do with this debtor.

It focused on the CLO obligations -- CLO business, the relationship, the transfers of certain assets away from Acis that basically Acis is claiming were fraudulent conveyances, and that was the real focus; not on any of the debtor's business operations.

Acis was the advisory arm through which the debtor structured its collateral loan portfolio. The fees -- the uncontroverted evidence is the fees generated from the CLO business represent approximately ten percent of the debtor's revenue and that that will reduce over time, because since the market crash in 2009 the debtor has not created any new CLO funds. So there's no active management and advisory services going on for the CLOs. They're just being liquidated in the normal course. Their importance will continue to decrease. And even right now, it's only ten percent.

The debtor generates its revenues from trading public securities; its equity positions in a variety of nonpublic, private-equity, and hedge funds; and advisory and back-office service provided to third parties. It is the monetization of those assets that will provide the basis for the restructuring of this debtor. And Judge Jernigan's prior experience with the small sliver of what the debtor's business currently is, will be only marginally relevant, at all.

Acis didn't have any other balance-sheet assets. They were basically an advisor of CLOs.

For example, Judge Jernigan has no experience or knowledge surrounding the debtor's multi-strat. fund; its Korean, Latin American, or Singapore private-equity investments; its investments in the PetroCap funds; or the other myriad of assets that are on the debtor's balance sheet which Your Honor will likely will hear about in connection with the hearings that will go on later.

The committee and Acis make a big point of arguing that Judge Jernigan is familiar with the shared-service and management agreements between Acis and the debtor. However, there was a lot of testimony from the podium on that. The only testimony before Your Honor is that the contracts are different. Mr. Waterhouse wasn't even familiar with the contracts, couldn't provide any testimony. But Mr. Sharp testified that the type of shared-service and advisory agreements for CLOs are markedly different than the type of services and advisory agreements for non-CLO entities. While Acis' Counsel stood up there and said there's a template and they're pretty much the same, that was purely argument. There was no evidence in the record to reflect that.

And in fact, the only two agreements that involved Highland in the Acis case were these two agreements. But again, they're like apples and oranges.

In any event, Your Honor, one of the matters that Mr. Sharp is focusing on will be the appropriate economic arrangement between the debtor and its affiliates and nonaffiliates, through its shared-services and advisory agreements. That has been a focus of DSI's analysis. The committee has indicated that's something that they want to focus on. And Mr. Sharp will come up with a recommendation as to what those should be, and it'll be that recommendation that'll be based on the market rate for these contracts in these particular businesses that will be relevant for Your Honor to consider, at some point.

They attached a post-confirmation opinion that Judge Jernigan issued with respect to denial of a motion to seek arbitration regarding provisions of those agreements. But if you read that opinion carefully, you will see that the primary issues in that case were whether an arbitration provision actually survived, given that the last version of the agreement did not have them -- there were five different iterations in each of the agreements. And after concluding that the arbitration provision did survive, she ultimately ruled that that notwithstanding, she would not enforce arbitration because the claims were too related to the other claims that were being asserted. Again, nothing to do with the debtor's business.

In fact, Your Honor, after today, I have no doubt that Your Honor will be a lot more familiar -- if Your Honor is not

already -- with what the debtor does. So Your Honor will hear testimony from Mr. Caruso; Your Honor will hear testimony from Mr. Sharp, about various aspects of the debtor's business, what it's doing, its management structure, how that structure is working. All that you will hear, which will put you in an advanced state, compared to Judge Jernigan, as opposed to being behind.

And there are other aspects of this case that are on the way that have nothing to do with Acis. For example, we just filed a motion to approve ordinary-course bonuses to employees. And we may also seek approval of a KERP and a KEIP. Acis had their own employees, and Judge Jernigan had no special knowledge of the debtor that would put her in a better position to give her an advantage over this Court in determining an appropriate compensation structure.

It isn't that difficult. Your Honor hears it all the time: KEIPs, KERPs. Judge Jernigan hears it all the time. My point is, Your Honor, there's nothing that would help her, from her knowledge of Acis, that would justify a transfer of venue.

They also stress that -- in their papers, that Judge Jernigan heard a lot of testimony from debtor's management. But they really don't discuss what the content of that testimony is or how it's, in any event, relevant to this case. They just really want to rely on the sheer volume of information that they have foisted on Your Honor, citing to the

entire record, by saying there's so much; there's been hundreds of pages, dozens of hearings, and then that means Judge Jernigan is in a much better position.

If they wanted to point to specific things in the record where the judge had specific knowledge, they could have. They shouldn't (sic) have. And they're trying to do this on a big holistic view, but when Your Honor looks at the record, I think Your Honor will conclude otherwise.

In any event, it's not really -- they don't explain why familiarity with the debtor's management is at all relevant. Look, they clearly want a trustee in this case and believe that because Judge Jernigan found debtor's management to not be credible, she'll be more apt to appoint a trustee than this Court. But that argument doesn't withstand scrutiny.

This case is different. This case is being managed by a CRO. This case had the debtor file a motion it didn't have to file for ordinary-course protocols. This case has -- thus far, you haven't heard anything about any discovery disputes, you haven't heard anything -- although you heard a couple weeks ago there might be issues with cooperation, we provided a substantial amount of documents, produced witnesses, in a significantly accelerated time frame. You have heard nothing about that.

So any un-cooperation or difficulty of any -- that they may have encountered in the Acis case, there's no evidence

that that's occurring here, for good reason; because Mr. Sharp is in charge. And although he is still reporting to Mr. Dondero, as his corporate structure, Mr. Dondero can terminate him, and if he terminates him, he has to give notice. That's appropriate. That's one of the issues we address in connection with the U.S. Trustee's concerns with the CRO motion. In order to file a corporate governance, he has to report. But there are certain things, as you'll hear later, that he has been given primary responsibility for.

Your Honor, Chapter 11 is about giving a debtor a fresh start, and this court is no -- this case is no exception. This Court is fully capable of evaluating the veracity of the debtor's witnesses; and transferring the case to Judge Jernigan, when the real motivation is because of how she has dealt with the prior case -- which they may not say it, but that's clearly what's happening here -- would be unduly prejudicial to the debtor.

We have nothing against Judge Jernigan. She is a fine jurist. But in this case I think it's a challenge and there's a reason why we decided to have the case filed here.

And then I'll also point to Your Honor the significant adversity between the two estates. Your Honor mentioned that. Counsel said, well, it happens in all cases. True. We've been involved in many, many cases with multi debtors, that they have issues in intercompany claims. That's a fact of modern

corporate life.

But this is different. The whole -- one of the -- the most significant asset of Acis are their claims against this debtor. How those claims are prosecuted and when they succeed, may make or break the Acis case as to whether unsecured creditors get paid or not.

In a case like this, this factor does not support a transfer of venue; we argue that it supports keeping the case before Your Honor so that it can maintain the separateness of the estates.

In conclusion, Your Honor, we don't believe the committee has come close to satisfying its burden that a change of venue is appropriate under 1412. And as I mentioned at the beginning of my presentation, the committee's motive in bringing the motion and Acis' motive in joining the motion is clear. Even though the debtor has installed a CRO with expanded powers, with impeccable credentials to address creditor concerns, the committee and Acis are focused on the appointment of a Chapter 11 trustee and believe the transfer of the case to Texas is the most likely to get that goal accomplished.

But rather than filing the case -- or filing a trustee motion here, they took their shot on a venue motion and hope that Your Honor will give them a shot to do it in Texas.

Your Honor, for those reasons, we respectfully request

that Your Honor deny the motion.

THE COURT: Thank you.

MR. POMERANTZ: Does Your Honor have any more questions?

THE COURT: No.

MR. POMERANTZ: Thank you, Your Honor.

THE COURT: Reply?

MR. CLEMENTE: Briefly, Your Honor. I will be brief. It will be a little less organized, because I'll just run through some points very quickly.

THE COURT: Okay.

MR. CLEMENTE: First of all, on Restaurant Acquisitions, I believe in that opinion, Your Honor, there were creditors that supported venue in Delaware. We do not have a single creditor on the record supporting Delaware -- excuse me -- supporting venue in Delaware.

Regarding the litigation in New York and Delaware, that's a red herring, Your Honor. They're forced creditors. They were forced to bring lawsuits to achieve their view of justice. It's not relevant to whether -- the location of that -- those lawsuits being in Delaware and New York. They were forced to bring those lawsuits in order to get paid by Mr. Dondero and the debtor.

Your Honor, we didn't call witnesses this morning, because we believe -- as I mentioned in my argument -- that the

uncontroverted facts support our venue-transfer motion. The other motions are their burden, Your Honor. And so I wanted to remind Your Honor of that.

Regarding Young Conaway, obviously, we shouldn't -- it shouldn't be held against us that we decided that the smart and prudent thing to do is to have able Co-Counsel advise us as we proceed in front of Your Honor. So I believe that that's something that simply is of no moment.

The location of the assets, Your Honor, these are financial instruments. They're interests in limited partnerships. They're documents. They're things that are created by documents. And again, it's not controverted. That's all located in Dallas, Your Honor.

So this idea of far-flung assets throughout the country just simply isn't true. These are documents. They're interests. They're things that exist on paper.

Your Honor, we have not made this about the mom-and-pop creditors. We take Your Honor's comments to heart on that. As Counsel for Acis suggested, this is about the large body of unsecured creditors that are sitting at the bottom of this cap structure with oversecured creditors on top of it. And this large body of unsecured creditors has said we believe that venue is appropriate in Dallas.

Regarding the rules of evidence, of course Judge Jernigan is not going to ignore the rules of evidence. But

we're talking about judicial efficiency.

For example, when I need to look at an indenture, I know in article 2 it's going to have payment terms. That's the type of thing that we're talking about, Your Honor; not that she's going to pre-judge or ignore the rules of evidence as she makes her determinations.

Finally, Your Honor, two things that I would -- that I would like to say. The testimony you may hear this afternoon, obviously that should not factor into what you're up the learning curve today, right now, in terms of considering the venue motion. That would put the cart before the horse, I think.

And, Your Honor, I'd be remiss if I didn't talk about this ordinary-course motion that we keep hearing about. If they didn't need it, they shouldn't have filed it. But instead, what they're trying to do is create some type of transparency and legitimacy around transactions that I think we'll make clear, are not in the ordinary course.

And the final point that I would make there, Your Honor; it's interesting Mr. Pomerantz referred to the multi-strategy transaction. That one is -- Your Honor, I will call -- a doozy. And you will hear more about it this afternoon, to the extent Your Honor decides not (sic) to keep venue.

With that, unless you have questions for me, I'll sit

down.

THE COURT: No questions.

MR. CLEMENTE: Thank you.

THE COURT: Thank you.

MS. PATEL: Your Honor, I'll be brief, and I won't repeat anything that Mr. Clemente, on behalf of the committee, said. But I did want to just address kind of the first point Mr. Pomerantz made with respect to Judge Hale, and he's not aware of any formal statement that Judge Hale is not taking cases. Your Honor, that's accurate. I'm not aware of any formal statement that Judge Hale is not taking cases either.

So to answer Your Honor's question, in terms of random assignment, in the Northern District of Texas, where I have practiced my entire career, and primarily practice before the courts that are there -- and I'm a former law clerk to Judge Hale also -- I will say that although there may be a random assignment, it is not -- absolutely not unheard of that when you've got the matter -- for example, if a case were assigned to Judge Hale, but Judge Houser were to hear first-day matters and other significant matters, that Judge Hale would then transfer that case for judicial efficiency and economy within the district, to Judge Houser for further proceedings.

In other words, the Northern District of Texas always finds the easiest way in which to handle matters. And I am confident, Your Honor, that if this matter were transferred to

the Northern District of Texas, that despite whoever it would be assigned to, that everyone is well aware of the time that Judge Jernigan has spent becoming familiar with Highland, these issues, and the amount of court resources that have been expended, such that this case would be transferred to Judge Jernigan.

But perhaps that's just a question for Judge Jernigan and her courtroom staff or the Northern District of Texas and the courtroom -- I'm sorry -- the court clerk or the staff that's there.

Your Honor, one last very quick point. The comment was made that -- with respect to CLOs that Highland hasn't had a new CLO since 2009. That, Your Honor, is because every new CLO that was issued from 2009 going forward to 2017, every one of those was issued in Acis. Acis was the structured-credit arm of Highland. It is how it issued new CLOs.

Indeed, it issued seven CLOs under Acis, with over two billion dollars in assets under management. The fact that there have been no new CLOs since then, simply means that they haven't been able to get one off the ground.

But make no mistake, Your Honor, the CLO business is valuable enough that it is now the subject of significant litigation because of all of the attempts to transfer those CLO assets away. So in terms of the court's familiarity, I would submit, again, that the bankruptcy court is clearly more

familiar with a significant piece of Highland's business.

One last thing, Your Honor, and somewhat similar to that, that Judge Jernigan was not familiar with the Korean entities, the Singapore entities, or the multi-strat. I submit to Your Honor that this Court hasn't been exposed to those things as well, other than conclusory statements that well, we've got some Korean assets; oh, we've got some Singapore assets; and we've got multi-strat; and other than Mr. Waterhouse's, like, five-minute testimony at the first-day hearing where I was questioning him with respect to the assets which he didn't really quite know about what's inside a multi-strat.

Other than that, this Court hasn't been exposed either to those assets, so when we're looking at the broad playing field rather than looking at specific assets, there is a learning curve. Judge Jernigan is further along it with respect to certain things. Otherwise both courts are similarly situated or neutral to each other. But it's those assets that she is familiar with, the business model of Highland, and that further along the learning curve that she is, that's what's significant here, Your Honor.

And that will play into, clearly, what will ultimately be how Highland is going to restructure. Again, the creditors here have voted with their feet in filing this transfer motion. And these are the very same creditors, Your Honor, that will be

necessary in order for this -- if it's going to be a successful restructure, they're the ones that are necessary to make it a successful restructure. Thank you.

THE COURT: You're welcome.

All right, let's break for lunch until 1:45. And when I come back at 1:45 -- when we come back at 1:45, I am going to issue an oral decision on this motion. All right.

(Recess at 12:39 p.m. until 1:47 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

Okay, good afternoon. Thank you for coming back. I'm now prepared to rule on the motion to transfer venue, which I'm going to grant.

So I think, as I hinted at during argument, that the case law that we're kind of clinging to on motions to transfer venue, really do not reflect the modern reality of Chapter 11 practice in the U.S. and internationally. And I think a lot of the parts of the test really don't reflect what's going on generally in Chapter 11 cases.

The thing I take greatest umbrage -- no, "umbrage" isn't the right word -- but disagree with the most is the idea that there's somehow a strong presumption of the debtor's choice of forum.

Look, every debtor that files bankruptcy -- certainly every sophisticated Chapter 11 debtor that files bankruptcy --

is engaged in forum-shopping. There is an element to that. Where you file will depend on a lot of things that are unique to the forum.

I don't think you need to be ashamed of that. I don't think that's bad. As long as the venue you're choosing is appropriate under the law, certainly you're going to make decisions based on what the law is in that particular district, perhaps even a preference to individual judges or judge in that district.

To compound that with a strong presumption in favor of the debtor is to really give a boost to the debtor's choice of forum, which is made -- included in the decision-making process is an element of forum-shopping, to a level that makes it very difficult to overcome that presumption.

Of course, the creditors that file a motion to transfer venue are engaged in forum-shopping themselves. Otherwise, why would they be switching forums and going for a different location. Again, I don't think that the word "forum-shopping" should have the negative connotation that it has come to have in the law. It is the reality of bankruptcy practice.

Now, if that's involved -- if that goes a step further and somehow involves chicanery or something inappropriate just from an ethical standpoint, of course that's problematic. But there's absolutely no indication here whatsoever that anyone, on behalf of the debtor or the creditors or the Dallas court or

the Delaware court, is doing anything other than acting appropriately.

The question about a motion to transfer venue is whether the motion should be granted by a preponderance of the evidence. If you add a strong presumption, you're turning it into a harder motion to be granted; and I don't think that's appropriate.

However, I find the laundry list of factors that are generally discussed to be irrelevant or almost irrelevant to the actual issues that are going on, particularly in a case like this. And I'll get to that in a second.

So six of the debtors are located in Texas; UBS is located in New York. UBS is located everywhere. Wells Fargo is located everywhere. Certainly companies have executive suites. But whether or not that should be the decision about where a case should file, to me, isn't particularly clear. It depends on the facts of the case.

I think a more general approach that would involve looking at the facts and circumstances of a case and seeing whether it points to a specific jurisdiction might be a more helpful way of proceeding. And that's what this case is really about.

This is a unique case, I think. It is a different case than those that we usually run into. And although maybe not completely different from every case, but in any event,

this case is very focused on responding to existing litigation. And that existing litigation of a former affiliate, as of a few months ago, and a pending appeal that could make it a current affiliate, is located in the Northern District of Texas.

The judge in the Northern District of Texas has done a tremendous amount of work and has done -- issued a number of opinions, had a number of trials. That work creates a familiarity with the facts, issues, and players in a case which, while it may not affect the actual decision based on evidence on a motion-by-motion basis, certainly could color a judge's approach to a case.

Judges are human. Judges make judgments over time as to the parties, as to the lawyers. That's not inappropriate, as long as you stick by the rules of evidence. But it certainly can color what credibility you might give to a witness or to counsel.

I think here we have a situation where the real gravitas of this case is in Dallas. The two facts that really come out to me are, in this case, the fact that the executive suite is very focused and very Dallas-oriented. It's a global empire, but it's clearly focused in Dallas. And the existing litigation in the Acis bankruptcy that's been going on for some time; those are the two predominant factors.

Everything else kind of falls away. The creditors are scattered. The assets are scattered. The economic

administration isn't being affected one way or the other. I mean, people can get on planes and you can go to Philly or you can go to Dallas. Either way, you're stuck on American Airlines. But so be it.

It can be done. And as a result, I think that the best solution here, to give the debtors a fair shot at reorganization, but to balance the creditors' rights and the creditors' desires, is to move the case to Texas.

And on that latter point, just to finish up. As I said with my previous decision in EFH, it was striking in that case that only one creditor moved to transfer venue and that none of the other creditors either actively opposed or simply stayed silent with regard to that motion, including significant creditors, like the official committee.

In this case, we have the opposite. We have the debtor defending its venue choice, of course. But there's a lot of silence, because there's no one else on that side. I thought it highly significant that Jefferies and -- is it Fortress?

UNIDENTIFIED SPEAKER: Frontier.

THE COURT: Frontier, thank you. That Jefferies and Frontier did not take a position. And no other creditors opposed the committee's motion. And the committee consists of a series of very large creditors.

So I think that given these facts and circumstances,

particularly the unique nature of the ongoing litigation and the existing tie to Dallas, the executive suite and management, principal place of business, if you will, being focused in Dallas, and creditors -- as Counsel said -- voting with their feet to move the case to Dallas, and applying just a good old fashioned preponderance of the evidence standard, that the Court should grant the motion, which I will do.

Now, I need an order. And we will get the machinery in place, as soon as I get the order signed, to transfer the file as quickly as possible.

I did call Judge Jernigan prior -- right before I came out -- well, right before I went and got lunch and then came out -- to inform her what I was going to do, so the Dallas court is aware that this is -- that this is an issue that's coming their way.

Is there anything -- I'm not going to create a lot of law of the case for Judge Jernigan on matters that don't need to be decided today. Is there anything the parties actually agree on that needs to go forward today or can go forward today? If not, I'd rather just save everything for Judge Jernigan to have a fresh look at. I know that she did mention that she has availability on her calendar over the next several weeks. So you should be able to get on it rather quickly, once the case gets transferred.

We used to send big boxes in the mail to do this, but

now it's just hitting a couple buttons on a computer to take care of that.

So is there anything we could -- we need to decide?

Okay. Just a question. Obviously there are estate professionals -- Pachulski not really a problem, since you'll stay in the case, but I'm thinking of Young Conaway -- and I don't know if there are any other firms that are Delaware firms that might fall out of the case that would be subject to the Court. But I'll leave that for Judge Jernigan to decide whether to retain them for a limited period of time or to pay them or not pay them. Hopefully, of course, they've earned their money; they should be paid.

Yes, sir.

MR. KHARASCH: Your Honor, Ira Kharasch of Pachulski. I think Your Honor, there is one vital matter that you should hear today and rule on. I would think it would be generally an easy motion. It is the application to employ the CRO. That is within the debtor's business judgment, given -- as we described the reasons for that, considering the concerns raised by creditors.

I think it's critical that the CRO be formally engaged. They've done a tremendous amount of work in the past six weeks. They've been at the company full time, for a team, for a month. They have done a lot of good stuff in this case. They have a lot more things to do.

The CRO has been tasked under the modified -- under the protocols, with broadened authority to take all kinds of and accept all kinds of decision-making over key decisions of this case, involving insider transactions, ordinary-course transactions. We've done a lot of work modifying the protocols that relate to that.

This company is operating every day. I think the CRO and his team deserve some comfort that they should get employed as of today, Your Honor. I -- you know --

THE COURT: Let me hear from the committee.

MR. CLEMENTE: Thank you, Your Honor. Matthew Clemente on behalf of the committee.

Your Honor, we don't agree with that. Again, it's not about DSI being paid or not being paid. As Your Honor mentioned with Young Conaway, that isn't the issue. But to the extent Your Honor has any familiarity with the motions, they're all intertwined. The CRO is all part of the protocols that they're advancing in the ordinary-course motion.

So this isn't about simply retaining a professional to ensure that that professional gets paid. It really is about setting what I like to call concrete pillars in the ground in terms of how the debtor views the case should be managed going forward. And I think based on Your Honor's ruling, that's something that Judge Jernigan should be given the opportunity to weigh in on.

So again, it's not about Mr. Sharp and his firm getting paid. I don't believe that that is the issue. They can continue doing what they've been doing, up to this point, just like we have, for example, at Sidley, and the rest of the professionals that haven't been retained. And I don't see why that should cause a problem.

But we do believe that that is integrated with the other suite of motions that would be before Your Honor; and we think it's appropriate for Judge Jernigan to make those decisions.

THE COURT: All right. Well, I don't view a retention application to be an emergent basis to hear a motion anyway. But I'm certainly not going to agree to sign it over objection of the committee, given how I just ruled. So --

MR. CLEMENTE: Thank you, Your Honor.

THE COURT: -- I'd also say. So I'd ask the committee Counsel to circulate a form of order and submit it under certification of counsel. I think the simpler the better; just for the reasons set forth on the record, and it's transferred. Don't put a lot of findings in there. That'll just cause trouble. That's my belief. But you can negotiate what you want to negotiate, and as soon as that's ready, upload it, inform chambers, we'll get it signed, and we'll start the machinery in place.

MR. CLEMENTE: Great. Thank you very much, Your

Honor. We appreciate it.

THE COURT: All right. We're adjourned.

(Whereupon these proceedings were concluded at 2:02 PM)

I N D E X

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RULINGS

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

December 3, 2019

CLARA RUBIN **DATE**

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